

ILLINOIS COMMERCE COMMISSION

COMMONWEALTH EDISON COMPANY)	
)	
)	ICC Docket No. 13-0495
Approval of the Energy Efficiency and)	
Demand Response Plan Pursuant to)	
Section 8-103(f) of the Public Utilities Act)	

**STATEMENT OF POSITION OF
THE PEOPLE OF THE STATE OF ILLINOIS**

PEOPLE OF THE STATE OF ILLINOIS
By Lisa Madigan, Attorney General

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The People of the State of Illinois, by and through Lisa Madigan, Attorney General of the State of Illinois (“the People” or “AG”), pursuant to the schedule established by the Administrative Law Judge (“ALJ”), hereby file their Statement of Position in the above-captioned proceeding.

I. INTRODUCTION

The General Assembly has declared that it “is the policy of the State that electric and natural utilities are required to use cost-effective energy efficiency and demand-response measures to both reduce delivery load and reduce both the direct and indirect costs of gas and electric utility service. 220 ILCS 5/8-103(a), 8-104(a). Every three years, electric and gas utilities must present to the Commission a proposed plan for providing to utility ratepayers comprehensive and cost-effective energy efficiency programs. 220 ILCS 5/8-103(f), 8-104(f).

Commonwealth Edison Company (“ComEd” or “the Company”) is an electric distribution utility, serving electric customers throughout northern Illinois. ComEd is, therefore, required under Section 8-103 of the Public Utilities Act (“the Act”) to deliver energy efficiency programs to their residential, commercial and industrial customers. 220 ILCS 5/8-103. This proceeding involves the Illinois Commerce Commission’s (“Commission”) review of AIC’s proposed plan for the delivery of energy efficiency programs to AIC customers for electric program years 7 through 9 under Section 8-103(f) of the Act, which requires electric utilities to file an energy efficiency and demand response plan every three years with the Commission.¹

While some issues that arose during the Commission Staff’s and Intervenor review of the ComEd plan have been resolved, others remain contested and in need of Commission resolution in this proceeding. Among those are issues addressing the need for the Commission to ensure that the *maximum* amount of cost-effective energy savings are achieved – not simply a minimum

¹ Under Section 8-103(e) of the Act, electric utilities shall implement 75% of the energy efficiency measures approved by the Commission, with the remaining 25% of those energy efficiency measures approved by the Commission implemented by the Department of Commerce and Economic Opportunity (“DCEO”). A minimum of 10% of the entire portfolio of cost-effective energy efficiency measures shall be procured from units of local government, municipal corporations, school districts, and community college districts. The Department shall coordinate the implementation of these measures. DCEO’s proposed programs are being examined by the Commission in ICC Docket No. 13-0499.

amount that fails to challenge the utility to provide programs that create deep energy savings for all customer classes over a longer term. Certain ComEd proposals related to its program content, request to reduce calculated savings goals by and across-the-board 5% and a less than collaborative approach to evaluating programs work against that goal. Contested issues remain in the establishment of a Net-to-Gross (“NTG”) evaluation framework that achieves the appropriate balance of (1) providing Ameren with the necessary certainty to allow it to create robust programs that achieve maximum energy savings over a longer term, and (2) ensuring that not all risk of financial penalty is removed, which has the deleterious of allowing a utility to put programs on autopilot at the expense of program modification where needed.

The Commission should enter an order pursuant to Section 8-103(f) of the Act that requires ComEd to re-file its proposed Plan, consistent with the recommendations made below.

II. STATUTORY FRAMEWORK

Several established statutory principles must guide the Commission’s evaluation of ComEd’s proposed PY 7-9 energy efficiency plan (“Plan”). First and foremost is the recognition that proposed programs must be cost-effective. As used in these sections, “cost-effective” means that the measures satisfy the Total Resource Cost test, as defined in the Illinois Power Agency (“IPA”) Act. 20 ILCS 3855/1-10². The Total Resource Cost test or “TRC”, as defined in the IPA Act, means a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. Importantly, the benefit-cost ratio is the ratio of the *net* present value of the total benefits of the program to the *net* present value of the total costs as calculated over the lifetime of the measures. *Id.*

When evaluating a utility’s energy efficiency programs, the Commission’s analysis of cost-effectiveness shall be applied at the portfolio level, as established by both the Public Utilities Act and reinforced by the Commission in multiple prior dockets. *See* 220 ILCS 5/8-103(f) (the utility shall “[d]emonstrate that its *overall* portfolio of energy efficiency and demand-response measures, not including (low-income) programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs”) (emphasis added); ICC Docket 10-0564, Order of May 24, 2012 at 92; ICC Docket No. 07-0539, Order of February 6, 2008 at 21; ICC Docket No. 10-0568, Order of December 21, 2012 at 30; ICC Docket No. 11-0341, Order of October 2, 2013 at 49.

Under Section 8-103 of the Act, electric utilities are required to implement cost-effective energy efficiency measures to reduce the amount of energy utilized by its retail customers in

² “Total resource cost test” or “TRC test” means a standard that is met if, for an investment in energy efficiency or demand-response measures, the benefit-cost ratio is greater than one. The benefit-cost ratio is the ratio of the net present value of the total benefits of the program to the net present value of the total costs as calculated over the lifetime of the measures. A total resource cost test compares the sum of avoided electric utility costs, representing the benefits that accrue to the system and the participant in the delivery of those efficiency measures, as well as other quantifiable societal benefits, including avoided natural gas utility costs, to the sum of all incremental costs of end-use measures that are implemented due to the program (including both utility and participant contributions), plus costs to administer, deliver, and evaluate each demand-side program, to quantify the net savings obtained by substituting the demand-side program for supply resources. In calculating avoided costs of power and energy that an electric utility would otherwise have had to acquire, reasonable estimates shall be included of financial costs likely to be imposed by future regulations and legislation on emissions of greenhouse gases. 20 ILCS 3855/1-10.

accordance with annual incremental annual energy savings goals specified in the statute. That subsection provides that electric utilities shall implement energy efficiency programs that achieve the following annual energy savings levels for the program years 2014 -- 2016:

- (7) 1.8% of energy delivered in the year commencing June 1, 2014; and
- (8) 2% of energy delivered in the year commencing June 1, 2015 and each year thereafter.

220 ILCS 5/8-103(b). Due to a recent amendment to the law, electric utilities may comply with this subsection (b) by meeting the annual incremental savings goal in the applicable year or by showing that the total cumulative annual savings within a 3-year planning period associated with measures implemented after May 31, 2014 was equal to the sum of each annual incremental savings requirement from May 31, 2014 through the end of the applicable year. Stated another way, the electric utilities now can meet the cumulative annual statutory savings goals over a three-year period. In addition, electric utilities shall implement cost-effective demand-response measures to reduce peak demand by 0.1% over the prior year for eligible retail customers, as defined in Section 16-111.5 of this Act, and for customers that elect hourly service from the utility pursuant to Section 16-107 of this Act, provided those customers have not been declared competitive. This requirement commences June 1, 2008 and continues for 10 years.

Notwithstanding the requirements of subsections (b) and (c) of this Section, a statutory cost cap provision provides that an electric utility shall reduce the amount of energy efficiency and demand-response measures implemented over a three-year planning period by an amount necessary to limit the estimated average annual increase in the amounts paid by retail customers in connection with electric service due to the cost of those measures to no more than the greater of 2.015% of the amount paid per kilowatthour by those customers during the year ending May 31, 2007 or the incremental amount per kilowatthour paid for these measures in 2011. 220 ILCS 5/8-103(d)³.

In submitting proposed energy efficiency and demand-response plans and funding levels to meet the savings goals adopted in Section 8-103 of the Act, ComEd must:

- (1) Demonstrate that its proposed energy efficiency and demand-response measures will achieve the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).
- (2) Present specific proposals to implement new building and appliance standards that have been placed into effect.
- (3) Present estimates of the total amount paid for electric service expressed on a per kilowatthour basis associated with the proposed portfolio of measures

³ For purposes of calculating a cost cap, as defined in sections 8-103(d) and 8-104(d), the total amount paid for electric and gas service includes without limitation estimated amounts paid for supply, transmission, distribution, surcharges, and add-on-taxes. *Id.*

designed to meet the requirements that are identified in subsections (b) and (c) of this Section, as modified by subsections (d) and (e).

- (4) Coordinate with the Department to present a portfolio of energy efficiency measures proportionate to the share of total annual utility revenues in Illinois from households at or below 150% of the poverty level. The energy efficiency programs shall be targeted to households with incomes at or below 80% of area median income.
- (5) Demonstrate that its overall portfolio of energy efficiency and demand-response measures, not including programs covered by item (4) of this subsection (f), are cost-effective using the total resource cost test and represent a diverse cross-section of opportunities for customers of all rate classes to participate in the programs.
- (6) Include a proposed cost-recovery tariff mechanism to fund the proposed energy efficiency and demand-response measures and to ensure the recovery of the prudently and reasonably incurred costs of Commission-approved programs.
- (7) Provide for an annual independent evaluation of the performance of the cost-effectiveness of the utility's portfolio of measures and the Department's portfolio of measures, as well as a full review of the 3-year results of the broader net program impacts and, to the extent practical, for adjustment of the measures on a going-forward basis as a result of the evaluations. The resources dedicated to evaluation shall not exceed 3% of portfolio resources in any given year.

220 ILCS 5/8-103(f). In addition, not more than 3% of energy efficiency and demand-response program revenue may be allocated for demonstration of breakthrough equipment and devices.
220 ILCS 5/8-103(g).

ComEd is seeking approval of significantly reduced energy savings goals over the PY 7-9 time period, in part due to the cost cap, and in part due to a failure to leverage existing cost-effective programs through the IPA's efficiency portfolio, pursuant to Section 16-111.5B, as well as unjustified and unreasonable assumptions as to how savings should be evaluated and quantified, as discussed further below.

III. PROGRAMS, GOALS AND BUDGETS

A. ComEd's Proposed Programs and Savings Goals

1. The Commission Should Order ComEd to Transfer the CFL Lighting Program to the IPA Portfolio in Program Years 8 and 9

ComEd is largely continuing its existing programs from year 6, although it will be transferring the promotion of its residential behavioral program to the IPA portfolio pursuant to Section 16-111.5B of the Act, and distributing the resulting financial savings among its other

programs. In addition, it has added a Large C&I Pilot program, discussed later in this Brief. The tables below show the proposed spending and savings targets by program for program years 7-9:

Table 1: ComEd Plan 3 Proposed Goals (ComEd Exhibit 1.0, Table 5, p. 26)

Programs	PY7		PY8		PY9		Total Plan 3	
	Cost	Net MWhs	Cost	Net MWhs	Cost	Net MWhs	Cost	Net MWhs
C&I - EE Programs								
Incentives Program	\$34,921,141	181,277	\$32,914,531	162,742	\$34,453,141	161,831	\$102,288,813	505,850
Large C/I Pilot	\$5,150,000	-	\$5,150,000	-	\$5,150,000	-	\$15,450,000	-
Optimization	\$11,746,965	92,547	\$12,185,046	95,781	\$12,360,062	97,831	\$36,292,073	286,159
C&I New Construction	\$6,169,888	14,795	\$6,477,491	15,665	\$6,965,252	16,535	\$19,612,631	46,995
Midstream Incentives	\$6,596,010	110,033	\$6,975,586	116,269	\$7,431,110	123,170	\$21,002,706	349,472
C&I TOTAL	\$64,584,004	398,651	\$63,702,654	390,457	\$66,359,565	399,367	\$194,646,223	1,188,475
RESIDENTIAL - EE Programs								
Residential Lighting	\$17,571,083	127,077	\$19,408,558	118,868	\$17,679,858	85,576	\$54,659,499	331,521
Appliance Recycling	\$7,677,341	26,178	\$7,681,929	26,178	\$7,686,654	26,178	\$23,045,924	78,534
Complete System Replacement	\$1,792,155	1,339	\$1,813,647	1,347	\$1,840,545	1,361	\$5,446,347	4,047
Multi-Family Comprehensive Energy Efficiency	\$4,531,533	9,512	\$4,258,615	9,014	\$3,843,218	8,838	\$12,633,366	27,364
Energy Education Kits Program	\$454,665	681	\$419,141	624	\$383,636	567	\$1,257,442	1,872
Single-Family Home Performance	\$1,452,130	2,139	\$1,402,654	2,157	\$1,199,494	1,954	\$4,054,278	6,250
Residential New Construction	\$30,565	16	\$32,549	19	\$31,639	15	\$94,753	50
RESIDENTIAL TOTAL	\$33,509,471	166,942	\$35,017,093	158,207	\$32,665,043	124,489	\$101,191,607	449,638
Demand Response - AC Cycling Maint.	\$1,230,000		\$1,230,000		\$1,230,000		\$3,690,000	-
Third Party Program Admin.							\$0	-
Portfolio Level Costs	\$18,426,525		\$19,075,253		\$19,295,391		\$56,797,169	-
Total Com Ed	\$117,750,001	565,594	\$119,025,000	548,664	\$119,550,000	523,856	\$356,325,001	1,638,114

ComEd Exhibit 1.0, Table 5, at 26. ComEd testified that in order to calculate the statutory savings goals for each year, the Company multiplied the projected energy to be delivered for each of the three Plan years (June 1 through May 31 of 2014, 2015 and 2016) by the statutorily mandated percentage reductions cited earlier above *1.8% for 2014, 2.0% for 2015 and 2.0% for 2016). ComEd Ex. 1.0 at 8. In light of the statutory budget cap listed in 8-103(d), however, ComEd is again proposing, as it did in Plan 2, modified energy goals of 0.71%, 0.68% and 0.66% for program years (“PY”) 7, 8 and 9, respectively. *Id.* ComEd further explained that these numbers represent modified annual goals “each of which is slightly lower (approximately 20,000 megawatt hours (“MWhs”) less) than the total *projected* energy savings goal for the given Plan year. *Id.*

While the People agree that the budget cost cap provided in Section 8-103(d) requires a downward modification of the three-year goals, AG witness Mosenthal took issue with a couple of components of the Plan itself and certain assumptions built into the savings projections that lead to unnecessary and unreasonable downward adjustment of savings goals.

ComEd has proposed to retain its Residential CFL Lighting program within its Section 8-103 portfolio. AG witness Mosenthal recommended shifting this program to the IPA procurement mechanism, pursuant to Section 16-111.5B, similar to what ComEd has proposed in Docket No. 13-0546 related to its Residential Behavior Program, which was previously provided under the Section 8-103 efficiency portfolio. Since the IPA portfolio is not subject to the 2% budget cap of Section 8-103(d), this transfer would free up significant capital to enhance and deepen the other programs in ComEd’s portfolio without sacrificing the CFL program or efficiency service to the residential sector.

Because of the existing schedule in the IPA procurement docket, it is too late to shift the CFL program into the IPA portfolio for PY7. However, shifting PY8 and PY9 CFL Lighting budgets to the IPA would free up \$37,088,416, or about 10% of ComEd’s total three-year budget, to capture additional savings in other programs. AG Ex. 1.0 at 9. Shifting this program to the IPA Portfolio makes sense for several reasons. First, there are no administrative concerns

related to moving standard CFLs to the IPA portfolio. ComEd itself could bid this program into the IPA as it currently exists, and continue to administer and deliver it using its current contractors. Thus, administration of the program would remain exactly as it would under ComEd's proposed Plan in this docket.

Second, no customer class equity concerns related to moving the Residential Lighting program to IPA exist. Consistent with the requirement in Section 8-103(f) that the entire portfolio includes "a diverse cross-section of opportunities for customers of all rate classes to participate in the program." 220 ILCS 5/8-103(f)(5). This is the case because the IPA efficiency programs are still funded by the same ratepayers using the same Section 8-103 rider mechanism, so this change does not significantly alter the overall split of investment by customer class. C&I customers would also benefit, since at least some of the savings from transferring the CFL program to the IPA could go to increased program budgets for these customer groups. Therefore, this proposal would significantly enhance the levels of cost-effective energy efficiency available to all customer classes. AG Ex. 1.0 at 9.

ComEd has indicated in SAG discussions that one reason for keeping the standard CFL program within Section 8-103 is to offer some programs in which all residential customers can participate. *Id.* However, as mentioned above, these programs will still exist (except pursuant to Section 16-111.5B procurement provisions), would still be overseen by ComEd (the IPA does not act as Program Administrator for any of the IPA efficiency programs approved, with programs still overseen by the Utilities), and will in fact broaden the Section 8-103 program offerings in total. In addition, all residential customers will still be eligible for the other remaining Residential Section 8-103 programs. In total, the broad offerings ComEd has proposed will still provide for efficiency opportunities for all residential customers.

As an established program that has repeatedly proven successful and cost-effective, the Residential CFL program fits appropriately within the IPA procurement mechanism. The CFL Program can also be ramped up or down annually if necessary. In addition, CFL programs have undergone evaluations in Illinois, and many similar programs throughout the United States have been extensively evaluated. As noted above, they are also programs that would still be administered in the same fashion by ComEd and its contractors, so there is no reason similar independent evaluation procedures cannot be used in the future as have been used for the Section 8-103 programs. As a result, the lack of clear EM&V procedures of IPA programs is less of a concern for these programs than for some of the new and untried programs bid into the IPA's proposed portfolio by independent vendors.

AG witness Mosenthal recommend that the re-allocated funds from assigning the standard CFL program to the IPA portfolio be split among the three main, proposed Commercial and Industrial ("C&I") programs. There are a number of reasons why he proposed this shift of funds. First, C&I savings are significantly cheaper than most of the other residential program savings, and would consequently lead to the largest amount of additional savings captured. AG Ex. 1.0 at 10. Second, typically, there are far more cost-effective efficiency opportunities in the C&I sector as compared to the residential sector, and the potential to ramp up these programs is far higher and will dramatically increase the overall net benefits of the combined Section 8-103/IPA portfolio. Third, ComEd has indicated that it is somewhat constrained in spending electric budgets in some of the other residential programs because of the relatively lower gas budgets in these combined programs. Finally, while equity between sectors is important, the residential ratepayers still will benefit significantly from the IPA programs, so shifting these

Section 8-103 funds to C&I will effectively maintain total residential contributions when considering both the Section 8-103 and IPA spending in total.

Another alternative involves a more balanced approach, whereby some funds are shifted to C&I programs and a portion is shifted to ramp up other residential programs, subject to any gas budget constraints for combined programs. *Id.* at 11. Of course, ComEd ratepayers would still achieve all of the savings planned from the CFL program, even though they were shifted to the IPA. In fact, because the IPA portfolio is not subject to the Section 8-103 spending cap, it is possible the CFL program could be ramped up further in future years through the IPA mechanism.

ComEd witness Brandt challenges the notion that annual savings would increase if the CFL program was shifted to the IPA portfolio. He notes ComEd's concern that if this program is not included within the Section 8-103 portfolio, a broad base of residential customers would not be able to participate in the Residential program, with the main program left being the Refrigerator Recycling program. ComEd Ex. 3.0 at 14-15. But this argument does not challenge Mr. Mosenthal's principal finding: that moving the CFL program into the IPA portfolio would increase both Residential and overall savings in years 8 and 9. The notion that ComEd has not yet developed additional Residential programs to supplant the CFL program is troubling, particularly given the fact that federal lighting standard changes will gradually diminish the amount of savings attributable to CFLs. Moreover, the facts in the record clearly contradict the notion that ComEd is doing all it can to achieve energy savings. The Company is requesting approval of diminished energy savings figures, in part due to the statutory cost cap, in part due to its selection of programs included in the 8-103 portfolio and in part due to its request for a lowered realization rate in order to reduce performance risk. In addition, ComEd's own energy savings potential study filed in the IPA Procurement docket, Docket No. 13-0546, clearly shows statutory goals are achievable, yet just require more revenues. Mr. Mosenthal's recommendations simply seek to increase ComEd's energy savings achievement without necessarily spending more money – a goal the Commission should embrace given the reduced goals ComEd proposes.

The Commission should order ComEd to refile its Plan under Section 8-103(f) and modify its portfolio offerings so that its Residential CFL program is included in the IPA efficiency portfolio in PYs 8 and 9. Savings created from this transfer should be re-allocated in accordance with the recommendations in this Brief.

In response to these points, ComEd argues that the Public Utilities Act ("the Act") precludes consideration of the OAG proposal, because Section 16-111.5B governs the procurement process, Section 8-103 "limits this docket to review and approval of ComEd's efficiency plan", and neither section "includes a provision authorizing transfer of a particular program to the IPA as part of the consideration of an electric utility's energy efficiency plan pursuant to Section 8-103." ComEd IB at 20. ComEd then reaches to assert that these two statutory sections "mandate rejection of the AG's proposal." *Id.* at 21.

This argument, however, invokes no particular rule of statutory construction, and imagines prohibitions where none exist. First and foremost, the OAG's recommendation that ComEd be directed to remove its CFL program from years 8 and 9 of its Plan is certainly within the Commission's right to order in this docket. The fact is, Mr. Mosenthal clearly demonstrated that doing so would still enable the program to be provided, albeit under Section 16-111.5B, while freeing up enough energy savings to increase total energy savings over the three-year portfolio by 2.2 megawatt hours ("MWh"), or a 22% increase from ComEd's proposed three-

year goals. AG Ex. 1.0 at 15. Directing ComEd *not* to offer a particular program under Section 8-103 certainly is within the Commission's authority in this docket.

Second, the General Assembly inextricably linked Section 8-103 programs and efficiency programs offered under Section 16-111.5B. Section 16-111.5B includes no fewer than eight references to Section 8-103 of the Act:

(a) Beginning in 2012, procurement plans prepared pursuant to Section 16-111.5 of this Act shall be subject to the following additional requirements:

- (1) The analysis included pursuant to paragraph (2) of subsection (b) of Section 16-111.5 shall also include the impact of energy efficiency building codes or appliance standards, both current and projected.
- (2) ***The procurement plan components described in subsection (b) of Section 16-111.5 shall also include an assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy efficiency programs or measures.***
- (3) In addition to the information provided pursuant to paragraph (1) of subsection (d) of Section 16-111.5 of this Act, each Illinois utility procuring power pursuant to that Section shall annually provide to the Illinois Power Agency by July 15 of each year, or such other date as may be required by the Commission or Agency, an assessment of cost-effective energy efficiency programs or measures that could be included in the procurement plan. The assessment shall include the following:
 - (A) A comprehensive energy efficiency potential study for the utility's service territory that was completed within the past 3 years.
 - (B) ***Beginning in 2014, the most recent analysis submitted pursuant to Section 8-103A of this Act and approved by the Commission under subsection (f) of Section 8-103 of this Act.***
 - (C) ***Identification of new or expanded cost-effective energy efficiency programs or measures that are incremental to those included in energy efficiency and demand-response plans approved by the Commission pursuant to Section 8-103 of this Act*** and that would be offered to all retail customers whose electric service has not been declared competitive under Section 16-113 of this Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy from the utility.

- (D) ***Analysis showing that the new or expanded cost-effective energy efficiency programs*** or measures would lead to a reduction in the overall cost of electric service.
 - (E) Analysis of how the cost of procuring additional cost-effective energy efficiency measures compares over the life of the measures to the prevailing cost of comparable supply.
 - (F) An energy savings goal, expressed in megawatt-hours, for the year in which the measures will be implemented.
 - (G) For each ***expanded*** or new program, the estimated amount that the program may reduce the agency's need to procure supply. In preparing such assessments, a utility shall conduct an annual solicitation process for purposes of requesting proposals from third-party vendors, the results of which shall be provided to the Agency as part of the assessment, including documentation of all bids received. ***The utility shall develop requests for proposals consistent with the manner in which it develops requests for proposals under plans approved pursuant to Section 8-103 of this Act, which considers input from the Agency and interested stakeholders.***
- (4) The Illinois Power Agency shall include in the procurement plan prepared pursuant to paragraph (2) of subsection (d) of Section 16-111.5 of this Act energy efficiency programs and measures it determines are cost-effective and the associated annual energy savings goal included in the annual solicitation process and assessment submitted pursuant to paragraph (3) of this subsection (a).
 - (5) Pursuant to paragraph (4) of subsection (d) of Section 16-111.5 of this Act, ***the Commission shall also approve the energy efficiency programs and measures included in the procurement plan, including the annual energy savings goal, if the Commission determines they fully capture the potential for all achievable cost-effective savings, to the extent practicable, and otherwise satisfy the requirements of Section 8-103 of this Act.***

In the event the Commission approves the procurement of additional energy efficiency, it shall reduce the amount of power to be procured under the procurement plan to reflect the additional energy efficiency and shall direct the utility to undertake the procurement of such energy efficiency, which shall not be subject to the requirements of subsection (e) of Section 16-111.5 of this Act. The utility shall consider input from the Agency and interested stakeholders on the procurement and administration process.

(6) ***An electric utility shall recover its costs incurred under this Section related to the implementation of energy efficiency programs and measures approved by the Commission*** in its order approving the procurement plan under Section 16-111.5 of this Act, including, but not limited to, all costs associated with complying with this Section and all start-up and administrative costs and the costs for any evaluation, measurement, and verification of the measures, from all retail customers whose electric service has not been declared competitive under Section 16-113 of this Act and who are eligible to purchase power and energy from the utility under fixed-price bundled service tariffs, regardless of whether such customers actually do purchase such power and energy ***from the utility through the automatic adjustment clause tariff established pursuant to Section 8-103 of this Act***, provided, however, that the limitations described in subsection (d) of that Section shall not apply to the costs incurred pursuant to this Section or Section 16-111.7 of this Act.

(b) ***For purposes of this Section, the term "energy efficiency" shall have the meaning set forth in Section 1-10 of the Illinois Power Agency Act, and the term "cost-effective" shall have the meaning set forth in subsection (a) of Section 8-103 of this Act.***

220 5/16-111.5B (emphasis added). As can be seen from the words of this energy efficiency procurement provision, the General Assembly clearly linked the programs to be provided under both sections of the Act in its reference to “expansions” of Section 8-103 programs, utilization of the Section 8-103 cost recovery rider, and satisfying identical definitions of cost-effectiveness for purposes of program approval. The notion that the Commission must somehow examine Section 8-103 programs in isolation of the IPA efficiency procurement provisions, accordingly, ignores the clear linkage of the programs referenced by the General Assembly.

Ironically, ComEd itself highlights the inextricable link to Section 16-111.5B programs that the Company itself as it planned, designed and developed its portfolio of Section 8-103 programs in this docket. For example, ComEd notes that while the General Assembly has not modified the spending cap provisions of either Section 8-103 or 8-104, it *did* enact Section 16-111.5B⁴ of the Act a few months after the Commission filed its statutorily required report on the effect of the spending cap on the delivery of energy efficiency programs, which requires the provision of additional, Section 8-103 program expansions and other new programs to be

⁴ Section 16-111.5B of the Act provides:

(2) The procurement plan components described in subsection (b) of Section 16-111.5 shall also include an assessment of opportunities to expand the programs promoting energy efficiency measures that have been offered under plans approved pursuant to Section 8-103 of this Act or to implement additional cost-effective energy efficiency programs or measures.

(3) In addition to the information provided pursuant to paragraph (1) of subsection (d) of Section 16-111.5 of this Act, each Illinois utility procuring power pursuant to that Section shall annually provide to the Illinois Power Agency by July 15 of each year, or such other date as may be required by the Commission or Agency, an assessment of cost-effective energy efficiency programs or measures that could be included in the procurement plan. 220 ILCS 5/16-111.5B(a)(2)(3).

delivered through the Illinois Power Agency's procurement process. ComEd IB at 15. ComEd acknowledges, too, that CFL lighting programs constitute the "simpler, less costly measures that generate substantial kWh savings." *Id.* at 14. ComEd further notes that it transferred the residential Behavioral program, known as the Home Energy Report program – another program it described as procuring "the cheapest energy efficiency in Plan Year 5" – to the IPA portfolio. *Id.* at 15. Clearly, the Company linked cheap, highly cost-effective programs to easy provision under the IPA portfolio, as evidenced not only by its decision to transfer the Behavioral program to the IPA portfolio.

ComEd's Brief also acknowledges how the statutory spending cap in Section 8-103(d) has served to reduce approved savings goals from the annual savings goals listed in Section 8-103(b) of the Act, both in this Plan proposal, and in ComEd's Plan 2, covering program years ("PY") 4 through 6. ComEd IB at 14. Given the spending screen, the Company is obliged to construct a portfolio that, to the extent practicable, achieves the maximum energy savings goal possible, in light of its inability to hit the actual statutory savings target. The OAG proposal that requests that the Commission direct ComEd to reconfigure its portfolio in years 8 and 9 to achieve more energy savings is completely consistent with that statutory goal of maximizing energy savings. As such, ComEd's argument that doing so is somehow precluded under both Section 9-103 and 16-111.5B of the Act has no basis in fact or law.

ComEd further argues that moving the program to the IPA would diminish the amount of energy efficiency being offered to the residential sector under Plan 3, and would conflict with the requirement under Section 8-103 that program offerings reflect a diverse portfolio across all customer classes. ComEd IB at 21. But this argument, too, misses the mark. To be clear, the OAG is not recommending that statutory provisions in Section 16-111.5B regarding bidding and IPA approval processes be avoided or ignored. Neither is the AG suggesting that residential customers pay money into Section 8-103 programs but not obtain their fair share of the programs offered commensurate with that revenue collection. That position would be absurd in light of the AG's statutory representation of residential customers in all proceedings before the Commission.

The point is to highlight a glaring inefficiency in ComEd's selection of programs as presented to both the IPA under Section 16-111.5B and the ICC under Section 8-103, its failure to abide by the directive that IPA programs constitute *expansions* of Section 8-103 programs (220 ILCS 5/16-111.5B(a)(2), (a)(3)(C)), and to encourage the Commission to provide direction to ComEd for future procurement and 8-103 Plan presentations. Moreover, to be clear, residential customers must receive a proportionate share of programs commensurate with the amount of dollars collected from residential customers through the Section 8-103 rider. ComEd's CFL program would *still* be offered to residential customers – the only difference would be that it would be offered under a different statutory provision of the Act. The program itself and its delivery to residential customers would remain identical.

Finally, ComEd argues that Mr. Mosenthal's recommendation that the additional energy savings that would be available in the Section 8-103 program portfolio upon removal of the CFL program in years 8 and 9 be applied to additional commercial and industrial programs, which are highly cost-effective, would increase costs to commercial and industrial customers. ComEd IB at 21. This argument is not persuasive, however. The People are not opposed to applying the program dollars made available by a transfer of the CFL program to the IPA portfolio in years 8 and 9 to additional residential programs. Moreover, the notion that adding more C&I programs "costs" more for these customers is debatable. The General Assembly has declared in Section 8-

103 and 16-111.5B that the provision of cost-effective efficiency programs will reduce the cost of electricity – not increase its cost. *See, e.g.,* 220 ILCS 5/8-103(a), 16-111.5B(a)(3)(E).

It should be noted, too, that when presented with these same arguments in the pending Ameren Illinois Company (“AIC”) Plan 3 energy efficiency program approval docket, ICC Docket No. 13-0498, Ameren noted in its brief that if the Commission does remove programs from Plan 3 in anticipation of them being implemented through the IPA portfolio, the freed up 8-103 funds should be used for residential moderate income programs to replace those planned savings removed from that customer class (as recommended by CUB). ICC Docket No. 13-0498, AIC Brief at 36. ComEd can and should be as flexible and committed to expansions of residential efficiency programs as Ameren appears to be. A Commission order directing ComEd to do just that would ensure that goal is achieved.

In its Initial Brief, ComEd suggests the AG seeks to interfere in IPA matters and the IPA procurement docket through this proceeding. ComEd Ex. 3.0 at 14. That assumption is simply wrong. To be clear, the People seek specific Commission direction in this Order for ComEd to bid its Residential CFL lighting program into the IPA portfolio, rather than include it in its Section 8-103 portfolio, in PYs 8 and 9. The OAG is not seeking any ruling that imposes requirements to accept the program in its Procurement filing at this time. Indeed, the Company would have to demonstrate at that time that the program is still cost-effective. In this docket, however, the Commission has the authority to advise ComEd on its program selections to be included in its IPA portfolio. Mr. Mosenthal presented substantial evidence that shifting this program to the IPA portfolio will increase overall energy savings. That is a particularly important finding, given ComEd’s request in this docket for the Commission to approve significantly modified energy savings goals and approve evaluation rules and assumptions that insulate the Company from any performance risk.

The People urge the Commission to, at a minimum, enter an order in this docket that directs ComEd to include *both* the standard CFL and Behavior programs in their package of programs presented to the IPA in years 8 and 9 (2015 and 2016) of this three-year plan, so that increased energy savings over the life of ComEd Plan 3 (PY 7-9) can be achieved. This is particularly critical and reasonable in light of ComEd’s admitted inability to achieve the annual energy savings goals provided under Section 8-103.

B. ComEd’s Commercial and Industrial (“C&I”) Pilot Proposal

1. A C&I Pilot Program Should Be Adopted With Details Worked Out In The Stakeholder Advisory Group (“SAG”)

ComEd has proposed offering a Large C&I Pilot program to its largest customers that would allow them to access the funds they have contributed specifically for their own projects. ComEd Ex. 2.0 at 50. ComEd indicated that the proposal was a direct response to a proposal made by REACT witness Rick Flowers at a SAG meeting this past Spring. ComEd Ex. 3.0 at 42. In general, as noted by ComEd witness Brandt, the framework proposed allows program participating to access the funds they have submitted through Rider EDA, subject to a co-funding agreement. In light of the testimony provided by the REACT and ComEd witnesses, the People support ComEd trying this new approach that large customers have indicated they would prefer. ComEd’s originally proposed design would ensure that large customers adopt cost-effective

efficiency measures and also leverage some additional private funding, similar to programs targeted at smaller customers. AG Ex. 1.0 at 12.

The Coalition to Request Equitable Allocation of Costs Together, otherwise known as REACT, submitted the testimony of Bradley Fults, who argues that large commercial and industrial customers have significant barriers to working within the existing Illinois programs. REACT Ex. 1.0 at 20-26. He claims these programs are not well suited to participation by large customers and therefore proposes a self-direct program that would allow these large users greater flexibility in making efficiency improvements and retaining control over their own contributions toward efficiency. *Id.* at 26-33.

While the OAG is sympathetic to the concerns expressed by Mr. Fults, and believes that some kind of pilot large customer program can and should be developed to address these perceived problems, we urge the Commission to reject the REACT Self-Direct program described in Mr. Fults' testimony. It should be noted that while the OAG is encouraged that REACT witnesses seem committed to making the Section 8-103 program work for them, the proposal to create a self-direct program as proposed in testimony, is unnecessary and will likely result in lower overall energy savings and net benefits to all ratepayers. *See* AG Ex. 2.0 at 4-10.

Mr. Fults claims there are three main reasons why the current programs do not adequately support large customer projects: (1) Because large customers have significant dedicated in-house resources, they routinely adopt efficiency measures and have already implemented the "low hanging fruit;" (2) Large customer projects often require complex planning and longer lead times than projects with smaller customers; (3) There is too high an administrative burden for large customers to effectively participate in programs due to "needless bureaucracy and lack of clarity."⁵

Aside from the policy reasons raised by Mr. Mosenthal for rejecting a self-direct proposal, the People do not agree with REACT that electric customers can retain Section 8-103 funding for a "self-direct" program as Section 8-103 now reads. For example, Section 8-104 of the Act specifically provides for a self-direct program for qualifying large natural gas customers under subsection 8-104(m). Section 8-103 includes no such self-direct provision.

That being said, the ICC should make clear that program administrators can and must work with all appropriate customers to commit to multi-year projects that span currently approved program or planning periods, particularly in light of the recent modification to Section 8-104(b) of the Act, which permits achievement of annual savings goals over a three-year period, and REACT witness Fults' stated concerns. ComEd's pilot proposal seems committed to do just that. Moreover, based on the submission of REACT/ComEd's Joint Motion for the Submission of Certain Data Request Responses, filed on December 11, 2013, the People have reason to believe that REACT is willing to engage in such discussions with ComEd and SAG members to construct a pilot that both satisfies the needs of these large C&I customers, but does so in a way that is consistent with the requirements of Section 8-103, and in a way that maximizes energy savings.

Any pilot program approved by the Commission should not authorize customer retention of efficiency dollars for electric programs, given the existing statutory electric/gas framework outlined in Sections 8-103 and 8-104. The People are happy to commit to working with the affected parties in the SAG to ensure that the Pilot furthers that goal.

⁵ REACT Exhibit 1.0 at 20-21.

In its Brief, ComEd urges the Commission to reject REACT's initial proposal for a large C&I self-direct program as unlawful, and instead approve its proposed C&I Pilot Program framework, jointly presented by the Company and REACT as Joint Ex. 1. ComEd IB at 56. REACT likewise proposes that the Commission approve the Pilot framework. The People support that request, with one caveat. Details associated with the Large C&I Pilot should be developed in the SAG, so that stakeholders can provide input on best practices and ensure that the final pilot is consistent with the goals and requirements of Section 8-103 of the Act.

The People note that the proposal presented in the ComEd/REACT Joint Ex. 1 represents a sea change in REACT's initial call for the creation of a self-direct program. As the People and ComEd noted in their respective briefs, Section 8-103 does not permit customers to opt out of the regular Section 8-103 revenue collection framework and self-direct efficiency investments or construct programs that authorize recognition of savings and retention of revenues over more than the statutorily authorized three-year period, established in Section 8-103(f). That fact stands in contrast to Section 8-104 of the Act, which establishes procedures for natural gas delivery efficiency programs, and specifically authorizes qualifying customers to self-direct efficiency investments. *See* 220 ILCS 5/8-104(m).

The People applaud both ComEd and the REACT customers for hammering out a framework over the course of this docket that attempts to satisfy the concerns of large C&I customers, while satisfying the dictates of Section 8-103. Yet, as revealed in Joint Ex. 1, some questions remain about the details of program delivery. Concerns regarding these unspecified components are as follows:

- Eligible measures are defined as any project that saves electricity and passes the TRC cost-effectiveness test. While this is not an unreasonable starting point, it is not sufficient by itself to protect ratepayers and these funds from inappropriate use. For example, a project that has very small ancillary electric savings but passes the TRC test because of fossil fuel, water, waste reduction, or other benefits could theoretically require the electric Section 8-103 funds to commit to pay 67% of the entire cost of the project even with virtually no electricity savings. This is clearly problematic and not intended by this program or in the interests of ratepayers or ComEd. SAG discussions could address this potential issue.
- The document proposes that participants may submit a project "*at any time within the 3 year planning period.*" Joint Ex. 1. at 3. Once the project is approved the funds are "reserved." It further requires "projects must be completed by May 31, 2017." Finally, it says "unused funds *at the end of the three-year pilot* are returned to the general pool." *Id.* The intent is that if participants do not use their funds, those dollars are transferred into the general C&I pool of funds for ComEd to spend in other programs – a concept the OAG supports. However, as written, ComEd has no way to know until the end of Plan 3 whether any funds remain as unspent, and if so how much. This means ComEd will have no ability to spend these unused funds on other programs, and will simply have to return the funds to ratepayers after reconciliation rather than roll them over into the next plan as additional money. This is problematic, assuming the goal of these programs is to create and satisfy Commission-established energy savings goals. One possible solution is to require customers to submit applications no later than the end of PY8 to reserve funds to be used in PY9. That way, ComEd would at least have a year (PY9) to spend the unused funds elsewhere. SAG discussions could fine tune this point.

- The document states “project savings are subject to ComEd normal EM&V process that is lead [sic] by the independent evaluation.” Joint Ex. 1 at 3. While the People support this point, more clarification is needed as to how the EM&V process would be applied to this unusual, new program. For instance, if the project is determined later to not pass TRC, does the customer have to give money back? SAG discussions would explore this question.
- The document proposes that “co-funding from both this program and other natural gas programs is permitted.” However, more details and rules on project funding should be spelled out in any final Pilot program. For example, if the combined gas and electric rebates would exceed 100% of the cost, there is no clarity as to which funding would be reduced, and how such reductions would be determined. Second, because the intent of the required 33% co-funding is to ensure that customers actually contribute something and were pursuing cost-effective projects, incentive limits of some kind – perhaps the remaining 67% -- should be incorporated in the program. Also, it is unclear how ComEd would know about any other incentives the customers is pursuing. SAG discussions could focus on ensuring that the pilot includes funding disclosure provisions.

All of these cited issues and questions could and should be resolved in the SAG process. Accordingly, the Commission should approve ComEd’s and REACT’s proposed large C&I Pilot framework, with the caveat that further details be discussed and resolved through the SAG process.

2. Savings From the C&I Pilot Should Be Added to ComEd’s Goals

In order to reflect the potential savings of the proposed Large C&I pilot in its proposed portfolio, AG witness Mosenthal analyzed the Company’s C&I offerings and proposed increasing ComEd’s savings goals by 76,388 MWh over the three year plan based on the Company’s Large C&I Pilot. AG Ex. 1.0 at 12. Mr. Mosenthal developed this figure by assuming that the Large C&I Pilot will capture savings at the same utility cost/kWh as the overall C&I Incentives program, where ComEd plans to count the savings. The reasons for this assumption are twofold. First, these customers can and do currently participate in ComEd’s (C&I) Incentives program, capturing savings at roughly that average rate. While it is possible that the average incentive under the Incentives program covers a somewhat smaller portion of the total project cost than that expected for the Large C&I Pilot, thereby driving up costs somewhat, all else equal, in Mr. Mosenthal’s experience large customers tend to have very short payback criteria for funds that compete with other investments, and typically pursue fairly inexpensive efficiency opportunities in self-direct programs. *Id.* at 12-13. In addition, the savings from large customer projects typically have some of the lowest overall costs/kWh, often far lower than the costs for smaller customers.

In the AG Initial Brief, the People argued that ComEd had failed to include any forecast of energy savings for its proposed Large C&I Pilot, and that based on AG witness Mosenthal’s analysis, ComEd’s savings goals should be increased by 76,388 MWh over the three-year plan. AG Ex. 1.0 at 12. In response, ComEd claims in its Brief that, while the Company could have been clearer in its evidentiary presentation, ComEd did, in fact, include an estimate of KWh savings for the Pilot and incorporated those savings into the C&I Incentives program. ComEd IB at 22.

While the People have no reason to doubt ComEd witness Brandt's Rebuttal representation, the savings figure for the C&I portfolio still appears to be insufficient based on other evidence, and the analysis of NRDC witness Chris Neme. First, the suggestion that the C&I Pilot program savings are already included in the C&I Incentives program raises serious questions about the reasonableness of the Company's C&I Incentives program savings estimate, as pointed out in NRDC's Initial Brief. NRDC IB at 8-11. As Mr. Neme points out in response to a ComEd data request (AG Cross Ex.2), when one combines the C&I Incentives and Large C&I Pilot program budgets, the cost per unit of savings from the combined program is *62% more* than the Company actually experienced in PY5. NRDC points out that this is a function of spending an average of \$5.1 million more per year on program implementation (a 74% increase over PY5) and \$3.1 million more per year on financial incentives (14% more than in PY5) while producing an average of 20% less savings per year than in PY5. NRDC Group Cross Ex. 1 [Com Ed Response to NRDC 1.02, Attachment 1].

ComEd offers four reasons for why it needs to spend a lot more in Plan 3 (NRDC Group Cross Ex. 1 [Com Ed Response to NRDC 5.05]): (1) ComEd moved some measures out of its C&I Incentives program to its Midstream Incentives program; (2) ComEd moved savings from its C&I Incentives program to its Multi-Family program; (3) The expansion of its small business direct install program (funded through IPA) is expected to reduce participation of small business customers in the C&I Incentives program; and (4) The TRM will preclude the Company's ability to count T12 replacement/retrofit savings beginning in January of 2012. NRDC Group Cross Ex. 1; NRDC IB 8-11. However, NRDC showed that NRDC witness Chris Neme's analysis and subsequent Com Ed responses to data requests clearly demonstrate that those factors cannot account for a 62% increase in the cost of the C&I Incentives program savings because:

1. Most of the measures that that migrated to the Midstream Incentives program (sometimes called the Business Instant Lighting Discounts program, or BILD program) did so prior to PY5. Com Ed estimates that the only measures that migrated out after PY5 – and therefore the only ones that could affect comparisons between PY5 costs per unit of savings and Plan 3 costs per unit of savings – accounted for only about 20 GWh of savings in PY5 (NRDC Group Cross Ex. 2 [Com Ed response to NRDC 6.03]). That represents only about 8% of the net savings generated by the C&I Incentives program in PY5 (NRDC Group Cross Ex. 1 [Com Ed Response to NRDC 1.02, Attachment 1]). Moreover, those savings were not free. Thus, their impact on comparisons between PY5 costs per unit of savings and Plan 3 costs per unit of savings would be less than 8%.
2. The Company's proposed multi-family program savings is forecast to produce only about 9000 MWh per year of savings in Plan 3. Even if all of the savings from that program came from measures that were captured in the C&I Incentives program in PY5 – and that is clearly not the case – the savings they are forecast to produce would only amount to only about 5% of the savings the Company is forecasting for its C&I Incentives program in the Plan 3 years. Moreover, the Company is forecasting that the savings from its Plan 3 Multi-Family program are three times more expensive than those it will produce from its C&I Incentives program. Thus, it is far from clear that this shift has any material impact on comparisons on the cost per unit of savings, from PY5 to Plan 3 years, in the C&I Incentives program (AG Cross Ex. 2).
3. The Company estimates that only about 20% of the savings in its PY5 C&I incentives program came from small business customers (NRDC Cross Ex. 2 [ComEd response to

NRDC 6.04]). Moreover, although the Company's small business direct install program is expected to grow substantially, it is still only expected to serve less than 10% of the eligible market each year (AG Cross Ex. 2). Put another way, the overwhelming majority of its small business customers – more than 90% in the first year, more than 80% in the second year, and more than 70% even in the third year – could still be served by the C&I Incentives program. Thus, over the three year period we would expect the impact on C&I incentives program savings (relative to PY5) to be less than about 5% (a three-year average loss of 20% of potential small business participants multiplied by the 20% program savings from such customers yields an approximate loss of 4% savings). *Id.*

4. The TRM changes to the T12 baseline do not go into effect until more than half way through PY8. They do not affect PY7 at all. However, the 62% average increase in the cost of savings over the three years of Plan 3 is not dramatically skewed towards the last year and a half. Even in PY7 – when the change in T12 baseline would have no effect – the Company is forecasting the C&I Incentives program cost per unit of savings in PY7 to be 54% higher than in PY5 (AG Cross Ex. 2).

NRDC IB at 8-11.

As NRDC noted, the four factors that the Company argues would lead to an increased cost per unit of savings in its C&I Incentives program appear to collectively account for no more than about a 20% increase – much less than the 62% average annual increase its plan suggests. If Mr. Neme's proposed 25,000 MWh per year increase in assumed savings for the program was adopted, which approximates Mr. Mosenthals's requested 76,388 MWh three-year total additional savings attributable to the C&I Pilot, the program would still cost \$203/MWh. AG Cross Ex. 2. That would still be about 42% more than the \$143/MWh the Company actually experienced in PY5. *Id.* Thus, if anything, Mr. Neme's and Mr. Mosenthal's proposed increased in assumed savings is conservative.

Based on the above proposed changes related to the CFL and Large C&I pilot program, ComEd's overall Plan 3 goals should be significantly modified, in conjunction with the recommendations described above. The following Table shows a total proposed Section 8-103 three-year goal of 1,997,164 MWh, with revised Section 8-103 costs and savings if the CFL program was transferred to the IPA portfolio starting in PY8, and the budget shifted to the C&I programs. This reflects a 22% increase from ComEd's proposed three-year goals and total savings that would accrue to ComEd customers would increase to 2,212,368 MWh when counting the CFL savings that the IPA would procure in addition to the Section 8-103 goals. This reflects an increase in total savings of 35% over ComEd's currently proposed three-year goals. In sum, the Table incorporates the following changes to ComEd's proposed savings goals:

1. Shifting of the residential CFL program to the IPA for PY8 and PY9 and reallocating those funds to the C&I Incentives (45%), Optimization (10%) and Midstream (45%) programs.
2. Adding savings impacts from the Large C&I Pilot based on the average cost/kWh of savings in the C&I Incentives program.
3. Increasing all ComEd savings estimates by 5.26% (1.0/0.95) to add back in the 5% downward risk adjustment ComEd has made.

AG Ex. 1.0 at 15.

Table 2: AG Proposed ComEd Plan 3 Goals with Adjustments for: (1) Shifting CFL Program to IPA; (2) Counting Savings for Large C&I Pilot; (3) Removal of the ComEd 5% Downward Risk Adjustment

	PY7		PY8		PY9		Total Plan 3	
Programs	Cost	Net MWhs	Cost	Net MWhs	Cost	Net MWhs	Cost	Net MWhs
C&I - EE Programs								
Incentives Program	\$34,921,141	181,277	\$41,648,382	205,925	\$42,409,077	199,201	\$118,978,600	586,404
Large C/I Pilot	\$5,150,000	26,734	\$5,150,000	25,464	\$5,150,000	24,190	\$15,450,000	76,388
Optimization	\$11,746,965	92,547	\$14,125,902	111,037	\$14,128,048	111,825	\$40,000,915	315,409
C&I New Construction	\$6,169,888	14,795	\$6,477,491	15,665	\$6,965,252	16,535	\$19,612,631	46,995
Midstream Incentives	\$6,596,010	110,033	\$15,709,437	261,845	\$15,387,046	255,039	\$37,692,493	626,917
C&I TOTAL	\$64,584,004	398,651	\$63,702,654	390,457	\$66,359,565	399,367	\$194,646,223	1,188,475
RESIDENTIAL - EE Programs								
Residential Lighting	\$17,571,083	127,077	\$0	-	\$0	-	\$17,571,083	127,077
Appliance Recycling	\$7,677,341	26,178	\$7,681,929	26,178	\$7,686,654	26,178	\$23,045,924	78,534
Complete System Replacement	\$1,792,155	1,339	\$1,813,647	1,347	\$1,840,545	1,361	\$5,446,347	4,047
Multi-Family Comprehensive Energy Efficiency	\$4,531,533	9,512	\$4,258,615	9,014	\$3,843,218	8,838	\$12,633,366	27,364
Energy Education Kits Program	\$454,665	681	\$419,141	624	\$383,636	567	\$1,257,442	1,872
Single-Family Home Performance	\$1,452,130	2,139	\$1,402,654	2,157	\$1,199,494	1,954	\$4,054,278	6,250
Residential New Construction	\$30,565	16	\$32,549	19	\$31,639	15	\$94,753	50
RESIDENTIAL TOTAL	\$33,509,471	166,942	\$35,017,093	158,207	\$32,665,043	124,489	\$101,191,607	449,638
Demand Response - AC Cycling Maint.	\$1,230,000		\$1,230,000		\$1,230,000		\$3,690,000	-
Third Party Program Admin.							\$0	-
Portfolio Level Costs	\$18,426,525		\$19,075,253		\$19,295,391		\$56,797,169	-
Total ComEd (not including DCEO or IPA portions)	\$117,750,001	592,328	\$119,025,000	659,275	\$119,550,000	645,703	\$356,325,001	1,897,306
Total including adjustment to remove ComEd 5% downward adjustments (not including DCEO portion)								
	\$117,750,001	623,503	\$119,025,000	693,974	\$119,550,000	679,687	\$356,325,001	1,997,164
Additional IPA Residential Lighting (including 5% ad								
	-	-	\$19,408,558	125,124	\$17,679,858	90,080	\$37,088,416	215,204
Grand Total ComEd plus IPA Residential Lighting (not including DCEO portion, with removal of 5% downward adjustments)								
	\$117,750,001	623,503	\$138,433,558	819,098	\$137,229,858	769,767	\$393,413,417	2,212,368
Percentage increase in overall savings to ComEd Ratepayers								
		10.2%		49.3%		46.9%		35.1%

AG Ex. 1.0 at 15. As shown by the Table, potential savings for the three programs years are increased by 10.2%, 49.3% and 46.9%, respectively, or 35.1% overall. *Id.* at 15. The Commission should ComEd to file a revised Plan pursuant to Section 8-103(f) that increases its proposed savings goals, consistent with these recommendations. In sum, the Commission should enter an Order that requires ComEd to revise its Plan 3 under Section 8-103(f) of the Act and increase the C&I Incentives program savings goals by either the 75,000 MWh figure provided by Mr. Neme, or Mr. Mosenthal's recommended 76,388 MWh.

3. ComEd's Proposed 5% Risk Reduction Proposal Should Be Rejected

The People note that ComEd seeks to remove 5% of the estimated savings for each goal in an apparent hedge against risk. ComEd Ex. 2.0 at 24. According to the People's briefs, this request is inappropriate because: ComEd's request questions the accuracy of its own projections; ComEd's perceived uncertainty does not warrant shifting the risk to ratepayers; and no additional risk has been inserted into this docket that would require such a hedge. Therefore, the Commission should reject ComEd's proposal to reduce their risk by shifting it to ratepayers.

The People noted that, first and foremost, ComEd's request leaves parties questioning the accuracy of its remaining projections if ComEd is seeking to cut 5% of its risk before the plan is even approved. If the Commission and all of the parties to this docket are to presume that ComEd has successfully and accurately estimated its goals, effectively, ComEd is now asking the Commission to only set its goals at 95% of what it actually plans to achieve. AG Ex. 1.0 at

13-14. ComEd should be setting its goals based on what ComEd *actually plans* to achieve. To do otherwise would be to explicitly set the goals lower than ComEd has indicated it can achieve within the spending cap. AG witness Mosenthal noted that the spending cap is a driving force behind ComEd's request to modify goals. AG Ex. 1.0 at 13-14. Ostensibly, this is to serve as a buffer against the possibility that ComEd might not fully succeed and causes risk to shift away from ComEd and shift toward ratepayers. AG Ex. 1.0 at 13.

The People also argued that ComEd's perceived or claimed uncertainty does not warrant its risk reduction strategy. The People applaud ComEd for proposing a diversified portfolio that includes numerous programs and thousands of individual efficiency measures. In addition, for better or worse, ComEd is seeking an unlimited level of flexibility to vary from its plan (as discussed by the People below). In the event that the Commission approves ComEd's requested plan and flexibility, ComEd will have developed a portfolio with ample room for adjustments and mid-course corrections throughout the course of the three-year plan. Each of these adjustments provides ComEd with more than enough "wiggle room" to make up for any assumptions that may turn out to be too aggressive.

In addition, presuming that the plan numbers in fact represent ComEd's best estimate of impacts, then there is an equal probability that savings could be higher or they could be lower. AG Ex. 1.0 at 14. The attendant goals should have been designed to reflect these best estimates. Because the TRM deems savings values for the vast majority of ComEd's efficiency measures and all parties agree that NTG values should ultimately be deemed, ComEd's risk has been greatly minimized and should fall well within the range of what can be effectively managed through corrections and adjustments during the Plan 3 period. AG Ex. 1.0 at 14.

ComEd attempts to defend its risk reduction proposal by claiming that "risk has already been introduced in this docket," that the proposal will seek to shield ComEd from unreasonable risk associated with implementing and completing new programs over the next three years, and that ComEd is also subject to risk regarding its planning assumptions. ComEd Ex. 3.0 at 18-19. The People note that ComEd is already asking for modified goals lower than the statutory goals. ComEd should be obligated to set goals that attempt to maximize savings given the existing budget constraints without seeking any greater downward modification than absolutely necessary. ComEd is effectively presenting "best estimates" of the planning numbers. As noted above, ComEd's best estimates should run a symmetrical risk of being either too high or too low. Given that ComEd should have presented its best estimates in this docket, and that ComEd's proposed numbers are what it objectively believes can be achieved, there is no basis for rewarding ComEd with a 5% reduction in its risk. AG Ex. 1.0 at 14. An error is not a valid reason to lower goals and reward ComEd with reduced risk. ComEd's estimates should be taken at face value. If ComEd, in fact, uncovered some error in its analysis, this error should be corrected before the Commission approves the Plan. Finally, the People take issue with ComEd's statement that "risk has already been introduced in this docket." Contrary to Mr. Brandt's testimony, none of the intervenors or Staff has introduced new risk into this docket. Rather, these parties simply disagree with ComEd's request to *remove* the risk.

In summation, goals should be set based on ComEd's best estimate of impacts, and that the diversity of its portfolio and measures promoted provides sufficient risk protection to it without this further 5% decrease. Therefore, the Commission should reject ComEd's proposed 5% reduction of its achievable savings estimate to reduce its risk exposure.

C. ELPC's Proposal for a Voltage Optimization Program

The People note that there appears to be some level of consensus between ComEd, ELPC, and the People that the Commission should order a feasibility study of a voltage optimization (“VO”) program. *See* ComEd IB at 48; ELPC IB at 20-21; AG IB at 25-26; *see also* ComEd Ex. 3.0 at 38. However, ComEd continues to push for this study to be funded through limited Section 8-103 funds. ComEd IB at 48. The People reiterate that it is inappropriate to pursue this measure with the very limited demand-side management funding resources in Illinois. AG IB at 25; AG Ex. 2.0 at 12. It should be noted that ELPC supports funding the proposed study through sources other than the limited efficiency funds. ELPC IB at 22. Therefore, the People urge the Commission to order the feasibility study and allow ComEd to recover any costs associated with a study consistent with how it recovers other distribution system capital and maintenance costs, and not use the limited DSM funds established under Section 8-103 of the Act for this purpose.

The People support ELPC's originally proposed funding approach as outlined by Mr. Volkmann at Page 37 of his Direct Testimony. ELPC Ex. 2.0 at 37. In their Initial Brief, the People noted that VO technology *can be* a cost-effective approach to better manage the electrical grid and it can achieve some reductions in energy demand. AG IB at 23, 24. However, allowing VO to be funded through limited efficiency funds not only competes with many other cost-effective efficiency opportunities and programs that ComEd can offer its customers, it would diverge from the traditional utility responsibility of managing its distribution system in such a way as to minimize ratepayer costs subject to appropriate standards of reliability and safety. AG IB at 24. Adopting VO is a supply-side solution to efficiency that is completely under the control of the utilities, is invisible to customers, and does not require any customer action to be successful, unlike efficiency and demand response programs created under Section 8-103 of the Act, which were established to *work with customers* to assist them in investing in improving the efficiency of their facilities.. AG IB at 24-25. The efficiency and demand response programs enabled by Section 8-103 of the Act are designed to *engage customers* – which is not an express goal of VO. AG IB at 25. Finally, the People also noted that the utilities have separate obligations to build and maintain efficient and effective distribution systems for which they can recover costs (and frequently earn a return) through various statutory and regulatory vehicles. The Commission should therefore order ComEd to perform the study using the funds as described in ELPC's proposal.

The People also note that they oppose ELPC's alternative proposals to certify VO as a qualified resource in meeting efficiency standards or reprioritize the Plan 3 programs. AG IB at 25-26. In summary, the People noted that these alternatives were not feasible, produced contradictory results, and were not reasonable. AG IB at 25-26. Therefore, the People urge the Commission to reject ELPC's alternative proposals.

The People urge the Commission to order ComEd to undertake the VO feasibility/potential study described by ELPC witness Mr. Volkmann. Any costs associated with this study should be recovered through the normal delivery service charges and not recovered from the limited Section 8-103 funds. The Commission should also make it clear to ComEd that implementation of VO should occur when it is best estimated to be a least-cost solution for ratepayers and the Commission should also identify an appropriate cost recovery mechanism separate from the Section 8-103 programs and funding mechanism to facilitate a VO program.

IV. BANKING and CFL CARRY-FORWARD SAVINGS

A. ComEd's Banking Proposal Should Be Rejected.

In the first electric three-year plans, the Commission allowed the "banking" of excess savings beyond that required to meet goals to be applied to future year savings requirements. However, in doing so, the Commission expressed concerns that if banking were to grow too large, it would be inconsistent with legislative intent for meeting annual savings goals pursuant to Section 8-103(b), and therefore limited allowable banking:

Limiting the amount of allowable "banked energy savings" to a percentage of the banked year's energy savings is reasonable. It is also reasonable to limit the amount that can be "banked" to one which would only allow utilities to "bank" a *de minimis* carry over, as anything further would violate the statute. Therefore, ComEd's and DCEO's request for Commission approval of "banked" energy savings is granted, but, they may "bank" no more than 10 percent of the energy savings required by statute in the year, in which, it is "banked."

Commonwealth Edison Co., Docket No. 07-0540, Order of Feb. 6, 2008 at 40-41. In Docket No. 10-0520, the Commission added a secondary criterion to banking that prohibited any banking if the *combined* savings of ComEd and DCEO did not also exceed the combined savings goal, even if ComEd *individually* exceeded its portion of the goal. ICC Docket No. 10-0520, Order of May 16, 2013 at 5.

ComEd makes clear in its testimony that it is seeking Commission approval to incorporate previously accumulated banked savings into its Plan 3. ComEd 2.0 at 60-61. Specifically, ComEd asks that (1) kWh savings banded during PY1 through PY 6 be applied to the proposed goals set in this Plan, and (2) kWh savings achieved in this Plan can be banked and applied during ComEd's next Plan. *Id.* The most recent banking balance that would exist following completion of savings verification for PY5 has yet to be determined. Further, because PY6 is currently pending and ends on May 31, 2014, the final determination of what banking might be available by the end of PY6 (otherwise known as the end of the current Plan 2 period) is not yet known. However, in response to NRDC data request 2.02, ComEd estimated that as of the end of PY6 (end of Plan 2), ComEd's total accumulated banked savings will be 491,695 MWh.⁶ AG Ex. 1.0 at 17.

There are several reasons why ComEd's request to carryover banked savings from Plan 2 to Plan 3 should be rejected. First, due to a recent amendment to Section 8-103(b) of the Act, electric utilities may comply with the annual savings goals of this subsection (b) by meeting the annual incremental savings goal in the applicable year or by showing that the total cumulative annual savings *within a three-year planning period* associated with measures implemented after May 31, 2014 was equal to the sum of each annual incremental savings requirement from May 31, 2014 through the end of the applicable year. 220 ILCS 5/8-103(b). No such transfer of banked savings is permitted between three year plans, however. It is worth noting, too, that Ameren Illinois Company requested no such transfer of banked savings between plans.

Second, as noted by Mr. Mosenthal, there has been significant dispute around how to count banked savings, and also conflicting recent Orders and Proposed Orders. Perhaps most

⁶ Response to NRDC 2.02, Attachment 1.

importantly, the Commission indicated when it first established its banking policy that it should be limited to a *de minimis* amount. Although not specifically authorized in Section 8-103 or 8-104 of the Act, the Commission did so in response to utility claims that without banking, achievement of annual statutory energy savings goals would be difficult if not improbable. See ICC Docket No. 07-0540, Order of February 6, 2008 at 40-41. However, in doing so, the Commission expressed concerns that if banking were to grow too large it would be inconsistent with legislative intent, and therefore limited allowable banking. ICC Docket No. 07-0540, Order of February 6, 2008 at 40-41. In Docket No. 10-0520, the Commission added a secondary criterion to banking that prohibited any banking if the *combined* savings of ComEd and DCEO did not also exceed the combined savings goal, even if ComEd *individually* exceeded its portion of the goal.

It is important to note when examining the banked savings is that this forecasted banked amount at the beginning of Plan 3 is **87% of ComEd's proposed PY7 goal and 30% of the cumulative three year Plan 3 goals.**⁷ AG Ex. 1.0 at 17. In other words, if these goals are inclusive of any applications of prior banked savings as ComEd requests, ComEd could effectively completely shut down its programs for almost the entire first year of the three-year plan and still meet its goals. Clearly, the constant accumulation of banked savings to the point where the amount constitutes such a significant portion of a year's goals exceeds any notion of the Commission-required *de minimis* amount.

Finally, the importance of banking savings is significantly diminished due to the cost cap inherent in Sections 8-103(b) and 8-104(b). Because the Section 8-103 goals continue to increase while budgets remain capped, Plan 3 and any future plans (barring a legislative modification) will require modified goals. Under these modified goals, any available banked savings must be added to them to arrive at a reasonable achievable target within the budget limits. Therefore, Mr. Mosenthal notes, banking becomes a zero-sum game. AG Ex. 1.0 at 21. In other words, there is no real difference whether you grant ComEd X MWh of banked savings for the next year and then increase its goal by X MWh, or simply discontinue counting banked savings. If goals are no longer set by legislation but simply set as the most the available budgets can support, then simply adding in extra banked savings provides no real incentive, because the utilities would simply have to meet a higher goal if it achieves more banked savings. *Id.*

ComEd's request to permit inter-Plan banking should be rejected for several reasons. First, parties agreed to the carryover of banked savings and the Commission approved the carryover from Plan 1 to Plan 2 in that docket as a part of a global settlement of many issues in that proceeding. No such settlement has been constructed in this docket.

Second, since that settlement, Section 8-103 has been modified, as ComEd itself point out in its Brief, to specifically permit intra-Plan banking within the three-year Plan period. ComEd IB at 89; 220 ILCS 5/8-103(b). No such authority is specified for banking between three-year plans.

In addition, Section 8-103 requires utilities to achieve *annual* savings goals. 220 ILCS 5/8-103(b). While the Commission authorized banking back in its 2008 order in Docket No. 07-0540, the Commission did so in response to utility claims that without banking, achievement of annual statutory energy savings goals would be difficult if not improbable. See ICC Docket No. 07-0540, Order of February 6, 2008 at 40-41. The Commission further expressed concerns

⁷ From p. 3 of ComEd's Plan 3 net goals (not including DCEO portion) are 565,593, 548,664, and 523,856 MWh for 2014-2016, respectively.

that if banking were to grow too large, it would be inconsistent with legislative intent for meeting annual savings goals pursuant to Section 8-103(b), and therefore limited allowable banking:

Limiting the amount of allowable "banked energy savings" to a percentage of the banked year's energy savings is reasonable. It is also reasonable to limit the amount that can be "banked" to one which would only allow utilities to "bank" a *de minimis* carry over, as anything further would violate the statute. Therefore, ComEd's and DCEO's request for Commission approval of "banked" energy savings is granted, but, they may "bank" no more than 10 percent of the energy savings required by statute in the year, in which, it is "banked."

Commonwealth Edison Co., Docket No. 07-0540, Order of Feb. 6, 2008 at 40-41. ComEd's request violates this precept because its banking proposal, if granted, would greatly exceed the 10% ceiling on permissible banked savings. The most recent banking balance that would exist following completion of savings verification for PY5 has yet to be determined. Further, because PY6 is currently pending and ends on May 31, 2014, the final determination of what banking might be available by the end of PY6 (otherwise known as the end of the current Plan 2 period) is not yet known. However, in response to NRDC data request 2.02, ComEd estimated that as of the end of PY6 (end of Plan 2), ComEd's total accumulated banked savings will be 491,695 MWh. AG Ex. 1.0 at 17.

Clearly, the constant accumulation of banked savings to the point where the amount constitutes such a significant portion of a year's goals, as noted above, exceeds any notion of the Commission-required *de minimis* amount. ComEd argues in response to that point in its Brief that it would limit the amount of banked savings applied to the limitation included in the Plan settlement – 15%. ComEd IB at 90. But, as noted above, that figure was part of a settlement, agreed to by all parties in the docket. No such settlement exists here, and the proposed 15% cap exceeds the 10% amount previously identified by the Commission as the maximum level (absent a global settlement) that would be permitted. ICC Docket No. 07-0540, Order of February 6, 2008 at 40-41.

ComEd also asserts that permitting banking between plans is appropriate because the Commission stated in its Plan 2 Order that permitting banking would assist the utility in achieving a modified energy savings goal. ComEd IB at 91. But a review of the Commission's Plan 2 Order does not support ComEd's arguments. The Commission specifically stated, "*Given the circumstances in this docket, the Commission approves the banking provisions set out in the Stipulation. Of course, the approval of banking here does not guarantee approval of banking for future three year plans.*" Docket No. 10-0570, Order of December 21, 2013 at 54. The Commission could not be clearer that its approval of inter-Plan banking was limited to the circumstances in that Docket. Those circumstances, including a global settlement, are not present here.

Finally, ComEd makes no offer to increase its forecasted Plan 3 goals by the amount it seeks to carry over from Plan 2. Thus, banking beyond that which is specifically permitted under Section 8-103(b), diminishes the Company's incentives to modify programs as need be to ensure delivery of maximum energy savings. Moreover, as noted in the AG Initial Brief, from a policy perspective, the importance of banking savings is significantly diminished due to the cost cap inherent in Sections 8-103(b) and 8-104(b). AG IB at 29. Because the Section 8-103 goals continue to increase while budgets remain capped, Plan 3 and any future plans (barring a legislative modification) will require modified goals. Under these modified goals, any available banked savings must be added to them to arrive at a reasonable achievable target within the

budget limits. Therefore, Mr. Mosenthal notes, banking becomes a zero-sum game. AG Ex. 1.0 at 21. In other words, there is no real difference whether the Commission grants ComEd X MWh of banked savings for the next year and then increase its goal by X MWh, or simply discontinue counting banked savings. If goals are no longer set by legislation but simply set as the most the available budgets can support, then simply adding in extra banked savings provides no real incentive, because the utilities would simply have to meet a higher goal if it achieves more banked savings. *Id.*

For all of these reasons, the Commission should deny ComEd's request to permit banking between three-year plans, and its specific request to carry over yet-to-be determined banked savings from Plan 2 to Plan 3. Any permitted *de minimus* banking should only occur *within* a three-year plan period, as now permitted under Section 8-103(b). This will allow electric utilities to overachieve in one year and still apply those additional savings to a year they might fall short, so long as it is within the plan period. This modification would provide greater flexibility for the electric utilities, smooth any unusual economic situations, reduce arbitrary concerns about exactly when a project is completed, and still ensure that the total three-year Plan goals are pursued.

B. ComEd's Savings Goals Should Be Adjusted Upward to Account for CFL Carryover Savings.

ComEd's compact fluorescent light (CFL) program promotes the sale of screw-in CFLs as a replacement for incandescent bulbs. Past evaluations have indicated from customer surveys that within the first year on average only about 69.5% of these CFLs get installed, with the remainder stored as future replacements when lights burn out. As a result, Illinois utilities have claimed only a portion of the ultimate CFL savings in the year that the bulbs were sold. AG Ex. 1.0 at 18. Based on the TRM, it is assumed that ultimately 98% of CFLs eventually get installed, with the remainder claimed at a rate of 15.4% and 13.1% in the subsequent two years, respectively. In effect, this has resulted in an additional "banking" of savings, over and above the 10% banking limit the ICC imposed in Docket No. 07-0540. *Id.*

In this docket, ComEd has stated that for planning purposes, it has not included CFL carryover savings from previous years that are tied to the recognition that customers regularly delay installation of CFL bulbs, thereby impacting the recognition of energy savings. However, that position ignores the fact that currently ComEd is given credit, going forward, in annual energy savings reconciliation docket, for the delayed energy savings associated with CFL bulbs, as discussed above. If the Commission grants ComEd's request to continue counting CFL carry-forward savings as the current TRM dictates, then ComEd's savings goals amount approved in this docket must be adjusted to account for the additional carry-forward savings that it would accrue from Plan 2, to be counted in the next three-year plan.

As noted in the AG Initial Brief, ComEd provided CFL savings from prior years, as well as its expected CFL savings from PY6 in response to discovery. AG IB at 31. From these data, given the current values in the TRM, Mr. Mosenthal calculated that an additional savings of 83,468 MWh could be applied to PY7 savings goals and 28,270 MWh could be applied to PY8 goals, for a total additional savings from CFL carry-forward of 111,738 MWh. While Mr. Mosenthal acknowledged that the exact amount of CFL carry-forward that could be counted in Plan 3 is not known with certainty, this estimate should be approximately correct. *Id.* In combination with the estimated accumulated banked savings of 491,695 MWh referenced above,

total additional savings available to ComEd could potentially total 603,433 MWh. This exceeds ComEd's proposed PY7 goal and is more than one third of ComEd's proposed three-year goal. AG Ex. 1.0 at 17.

While ComEd did not include any CFL carryover it will have accrued at the end of Plan 2 that could be counted in Plan 3 in this docket, the Company did include the full, ultimate savings over time from each CFL within the year it was actually purchased in Plan 3, unlike prior CFL savings calculations, for purposes of Plan 3, that account for the delay in customer installations. In other words, the PY7 CFL savings figure represents not only the savings that could be claimed in that year, but also the subsequent savings that would be claimed in PY8 and PY9 from these bulbs, as determined by the Technical Reference Manual ("TRM"). *Id.* at 19.

As a result, Mr. Mosenthal testified that ComEd slightly overestimates the actual savings it will be able to claim from new CFLs sold in Plan 3, absent any change in the CFL carry-forward approach, which does not recognize CFL savings until subsequent years under the current TRM.

Because the overall volume of CFL bulbs promoted is expected to drop significantly, and the baseline assumptions in the TRM continue to decrease over time as a result of federal standards, the additional savings ComEd is including in its Plan 3 are significantly smaller than the carry-forward savings from Plan 2 that it is omitting. Specifically, AG witness Mosenthal calculated that ComEd has included approximately 32,739 MWh in Plan 3 of additional CFL savings from its PY8 and PY9 activity that it would actually not be able to claim until PY10 and PY11. In summary, ComEd did not include 111,738 MWh of estimated CFL carry-forward from Plan 2, but has counted an extra 32,739 MWh in Plan 3 that they would not actually be able to count under current procedures. This results in a net adjustment (assuming this net is added to ComEd's proposed goals) of an additional 78,999 MWh. *Id.* at 19-20.

The OAG urges the Commission to take into consideration these banked and carry-forward savings from prior plans that will be recognized as savings, if the ICC permits the recognition of banked and CFL carry-forward savings to continue, as ComEd has requested.

If CFL carry-forward is continued to be permitted by the Commission, then 78,999 MWh should be added to ComEd's goals in this docket, to reflect the delayed recognition of CFL savings that will increase ComEd's amount of banked savings.

AG witness Mosenthal argued, as an alternative to adding the unaccounted for banking and CFL carry-forward savings from Plan 2 to ComEd's Plan 3 modified goals, that the Commission could eliminate the CFL carryover process (along with inter-Plan banking), and simply assume they are installed in the year they are purchased, which is what ComEd did in establishing projected savings for new CFL purchases in Plan 3, unlike prior CFL savings calculations. This would simplify the planning and goal setting process, because the exact banking and CFL carry-forward values cannot be known with certainty at this time. While ComEd complains that would require modification to the TRM used in Plan 3, the Commission has the authority to do so in this docket. ComEd IB at 24-25. Contrary to ComEd's position, there is nothing prohibiting the Commission in its review of both energy savings to be achieved and evaluation processes to be followed, to make a finding that the TRM should be modified for CFL evaluation purposes in Plan 3. This finding could similarly be made in Ameren's Plan 3 docket, Docket No. 13-0498 for purposes of consistency.

In its Brief, ComEd argues that the AG has conflated banking and CFL savings in its recommendation. ComEd IB at 24. That is not true. The AG recognizes that banking and CFL carry-forward are separate, however, the issues in this Docket are interrelated because both of

these policies will provide ComEd with additional savings created by Plan 2 activity that can be counted by ComEd in Plan 3 to help it meet its goals. To the extent that ComEd is seeking approval of banking between plans, and CFL energy savings calculations are currently delayed by design, that conflation is necessary for purposes of setting energy savings goals in this docket.

Thus, if the Commission permits ComEd to transfer banked savings and/or CFL carry-forward savings from Plan 2 to Plan 3, the approved level of savings in Plan 3 must take into account these additional savings that will serve to offset savings goals in Plan 3. Under that scenario, ComEd will have to work less to achieve savings goals that do not recognize the banked and CFL carryover savings totals. The OAG recommendation is targeted at ensuring that the carryover amounts of CFL savings are recognized going forward in the establishment of Plan 3 savings goals, and should be adopted by the Commission. As noted above, if CFL carryover and banking are not adopted, then the Commission should enter an Order that revises the TRM procedure to eliminate the CFL carryover process (along with inter-Plan banking), and simply assume they are installed in the year they are purchased.

V. COMED'S PROPOSAL FOR UNLIMITED FLEXIBILITY

The People note that ComEd proposed that it be granted essentially unlimited flexibility to modify its Plan 3 as it deems fit, with the only discernible restriction being that it remains within the bounds of any clear statutory or regulatory rules, such as ensuring that budgets do not exceed the budget cap. Although ComEd claims that it is not seeking unlimited flexibility and that it is essentially seeking to maintain the status quo (see ComEd Ex. 2.0 at 44; ComEd Ex. 3.0 at 83), its request speaks to the contrary. ComEd witness Brandt states in his direct testimony that “ComEd will require the flexibility necessary to manage the costs and the program and customer mix to determine when funds are reallocated and to properly manage the portfolio” (ComEd Ex. 2.0 at 58), which from the People’s perspective reads like a request for unilateral permission to alter its plans as it chooses without approval from any stakeholders or the Commission. The People cannot support ComEd’s request.

Although the People are generally supportive of granting program administrators wide-enough latitude to make plan and program design modifications as they see fit, such decisions should be typically responsive to what they are learning in the field, how markets are responding, and to effectively and in a timely manner make mid-course corrections to improve program effectiveness. That said, AG witness Mosenthal cautions in his testimony that he believes that ComEd’s request is “too broad” and opens a door for ComEd to “game the system.” AG Ex. 1.0 at 24. Prior to recent legislative changes, such as those implementing budget constraints that drastically limit the approved goals, ComEd’s requested flexibility may have been appropriate if ComEd had found better and more effective ways to meet the goals while still achieving broad policy objectives. However, given the reality of the statutory modifications, allowing flexibility without limits provides ComEd with an ability to pursue a completely different plan than what was originally designed in an effort to achieve cheaper savings by shifting from more expensive to less expensive programs. AG Ex. 2.0 at 24.

The People also note that ComEd witness Brandt falsely asserts that Mr. Mosenthal presented no evidence to support the possibility that ComEd could “game the system.” ComEd Ex. 3.0 at 83-84. Mr. Mosenthal explained the potential for ComEd to shift funds from expensive programs to cheaper programs. AG Ex. 1.0 at 25. At the same time, ComEd has

proposed a relatively balanced program portfolio that Mr. Mosenthal has generally supported. AG Ex. 1.0 at 25. That said, ComEd is coming to the Commission seeking approval of significantly downward modified goals, largely due to the Section 8-103 budget cap limits. 220 ILCS 5/8-103. These goals are based on this specific plan and specific allocations of resources among different programs with widely varying costs per unit of savings.

The effect of this approach is demonstrated by reviewing ComEd's projected costs per first year kWh saved at the program level (ComEd Ex. 1.0 at 26, Table 6), which reveals that the most expensive program *costs 35 times more* per unit of savings than the least expensive program. A wide range of savings per kWh spent could make it far easier (or, indeed, far harder) for ComEd to meet its goals if it chooses to dramatically shift its allocation of program funding. AG Ex. 1.0 at 4. Hypothetically, ComEd could choose to shift a significant amount of funds from the more expensive programs to the more inexpensive programs, making it far easier for ComEd to meet its goals. Essentially, with a simple shift of resources, ComEd would be able to pursue a different and cheaper plan than the one that the Commission approved. AG Ex. 1.0 at 26.

There is no fear of "micromanaging" the portfolio under Mr. Mosenthal's proposal. Specifically, Mr. Mosenthal proposed that any budget shifts resulting in a 20% or greater variance from planned annual program budgets would trigger goal adjustments. For example, ComEd could underspend 10% in one program and overspend 15% in another program and not trigger an adjustment. However, if they were to shift resources beyond the 20% benchmark, then goals would be modified accordingly.

The People note that this proposal could also serve to benefit ComEd if they found success with an expensive program and wanted to shift funds into it from a cheaper program. In other words, it would result in a decrease in *goals* and protect ComEd in the event that a relatively inexpensive program is not working well and they decide to shift funds to more expensive program. This approach not only protects ComEd, but it protects the ratepayers as well by ensuring that ComEd's ultimate goals reasonably reflect the plan they actually intend to pursue. *Id.* at 26-27.

Even though a 10 to 15 % shift could have a noticeable impact on the portfolio, Mr. Mosenthal proposed the 20% threshold in order to continue to grant program administrators with the flexibility to manage their portfolios and ensure that resources are devoted where they will work best and result in the greatest overall impacts, in light of the statutory policy objectives and constraints. Mr. Mosenthal recognizes the reality of these programs and notes that it is unreasonable and unrealistic to expect a program administrator to always expect an administrator to complete a program by the end of the year exactly on budget. AG Ex. 1.0 at 27. The People also deem it worth noting that ComEd itself appeared to identify this 20% budget variance as a reasonable benchmark. *See* ComEd Ex. 2.0 at 59. The People also urge ComEd to bring any proposed modifications to the SAG for discussion whether or not the 20% limit is exceeded. The SAG has proven to be an effective sounding board to allow various stakeholders to provide input and ultimately help build support for the programs and provide the program administrators with an added level of security in knowing if any stakeholders have major concerns prior to any after-the-fact litigation.

If ComEd were granted an unlimited ability to shift funds, ComEd would be virtually guaranteed that they could easily meet any approved goal simply by shifting more effort to the cheapest programs. Because the budget cap constraints prevent ComEd from pursuing all cost-effective efficiency resources in each market, they have significant flexibility to ramp up the

least expensive programs. AG Ex. 1.0 at 26. The People are not seeking to constrain ComEd from making the choices it needs to make to manage its portfolio. Rather, the People are simply recommending that the Commission establish *some limits* on flexibility. The proposed limits would not serve to prevent ComEd from exceeding them if they should so choose. Therefore, the People urge the Commission to adopt their proposal on portfolio flexibility.

VI. EVALUATION, MEASUREMENT & VERIFICATION

A. ComEd's Proposed Net-to-Gross Methodology Should Be Rejected By The Commission.

The NTG ratio is used to adjust the total estimated “gross” savings from all measures tracked through the program to estimate the true “net” effect that the program has produced. AG Ex. 1.0 at 28. This can be different for a number of reasons, with the two primary components being accounting for “free ridership” and “spillover.” Free ridership refers to the portion of customers participating in the program that would have installed some or all of the efficiency measures even without the programs existence. Therefore, while these savings are counted in the utility’s gross savings tracking system, they do not provide true additional net savings to society since the customer would have captured some or all of the savings anyway. Spillover refers to influences of the program that result in some customers or trade allies actually pursuing additional efficiency, but not formally participating in the program. In this case, the utility gross tracking system does not count these savings, but to the extent customers and trade allies were influenced by the program and it caused them to do additional efficiency measures on their own, this savings is in fact a net effect of the program. *Id.* at 28-29.

ComEd argues that it needs certainty around NTG estimations to properly plan and manage its portfolio. ComEd Ex. 2.0 at 64. It argues that values for a given year should be fully certain by March 1 for the following program year beginning June 1, and be based solely on prior and available past ComEd program evaluations for existing programs without any attempt to reach consensus in the SAG, as currently occurs. For new programs, it proposes the evaluators propose a planning NTG value, to be deemed. *Id.* at 64-65.

There are a few reasons why the Commission should reject ComEd’s proposed NTG framework. First, under ComEd’s proposal, the Company’s proposal would inappropriately limit the amount of factual data and input needed to establish reliable NTG values. Specifically, ComEd’s approach would automatically use the most recent completed *ComEd* evaluator’s NTG result for each existing program. But Mr. Mosenthal characterized this approach as “too restrictive, creates too much burden on limited EM&V resources, and may not result in the best estimates of future NTG.” AG Ex. 1.0 at 30. He noted, for example, that there are often multiple sources of information on NTG for a particular program, even within Illinois. For example, Ameren Illinois Company may also be offering a virtually identical program. Because of the uncertainty inherent in any single NTG estimation method, it can be valuable to use professional judgment and consider multiple studies over multiple years to best estimate a single future NTG value. *Id.* at 30-31.

Indeed, under ComEd’s approach, the NTG value could potentially vary significantly from one year to the next even with very stable programs and markets. For example, the values applied to ComEd and Ameren for a virtually identical program could be very different. That very phenomenon occurred after the first year of efficiency programs, with ComEd’s evaluator

and Ameren's evaluator coming up with very different NTG values, and consequently, very different savings values related to both companies' CFL lighting program. Ensuring that multiple sources of information are included within a NTG assessment, not just a utility evaluator's sometimes very different assessments, is consistent with best practices in establishing net savings values.

Second, Mr. Mosenthal stated that ComEd's approach would result in excessive pressure on EM&V resources, and also create some potential perverse incentives. For example, it seems that ComEd's intent may be to evaluate NTG ratios each year for any programs that comprise a significant part of its portfolio savings. That may not be the best use of limited EM&V resources, according to Mr. Mosenthal. *Id.* at 31. Further, the ComEd approach sets up a situation where parties will potentially have strong and inappropriate incentives to either conduct studies that are not necessary or to forego studies that would be useful.

For example, under ComEd's proposal, if no new NTG study is done than ComEd knows with certainty exactly what NTG it will claim in the future. Therefore, if ComEd perceives that the last evaluation result was higher than it expects, it will have a strong incentive to avoid any future NTG studies for that program. Similarly, if ComEd believes a past evaluation result was lower than it expected, it will have a strong incentive to do a new evaluation in hopes of getting a better result. Because ComEd's approach only allows for any modifications based on actual ComEd evaluations, these perverse incentives can be problematic. *Id.*

Finally, Mr. Mosenthal pointed out that efficiency programs can and do change over time, with markets, baselines, incentive levels and eligibility requirements in flux. As a result, if ComEd modifies a program design, it would be better to estimate a likely NTG value going forward than to simply always use a prior evaluation of a different program design or market. Both the AG Exhibit Modified NTG framework (AG Ex. 1.1) and Staff's modified NTG framework allow for these kinds of changes by simply suggesting that SAG parties reach consensus on their best estimate of the most appropriate NTG value to apply, regardless of whether it came out of a single study or not. *Id.* at 31-32.

While the People are sympathetic to ComEd's desire to ensure with certainty exactly what every deemed NTG value will be by March 1 of each year, that is also what the AG, other Intervenor and Staff seek as well with their proposals. In Direct testimony, AG witness Mosenthal presented AG Exhibit 1.1, which shows the latest draft proposed NTG framework upon which SAG has been working to develop and reach consensus. AG Ex. 1.1 Mr. Mosenthal noted that this framework also achieves certainty by allowing for deemed NTG values to be established in a timely fashion each year. Staff witness Jennifer Hinman also submitted a proposed NTG framework that is very similar to Mr. Mosenthal's with a few critical differences.

The intent of both AG Exhibit 1.1 and the Staff-proposed modified NTG framework is to provide the utility's certainty by March 1 through reaching consensus on a set of deemed values that would then be filed with the Commission by March 1. While there is still some uncertainty in the event complete consensus is not reached by March 1, the framework itself is designed to encourage consensus building, and there are clear default provisions for resolving non-consensus.

There are three primary differences between the AG NTG framework and Staff's proposed NTG framework. One amounts to a slight variations in the proposed schedule. Staff has proposed two schedule tracks—one for the residential sector and a separate but parallel schedule for the commercial and industrial sectors. This is because the evaluators have informed Staff that

typically residential evaluations are completed about one month prior to the C&I evaluations. Staff's schedule allows slightly more time for the residential sector by acknowledging the timing of evaluations. The People support this minor change. What is important about the schedule is simply that the process be completed in time for program administrators to file the NTG values with the Commission by March 1 of each year. AG Ex. 1.0 at 34.

The second difference between the AG and Staff NTG proposals relates to the process to be used when consensus on a NTG value is not reached by March 1 in a year. In AG Exhibit 1.1, Mr. Mosenthal proposed that if consensus on an existing program NTG is not reached, then the past two *prior and already available* evaluation NTG estimates would be averaged, and used prospectively for the following program year. AG Ex. 1.0 at 34. Staff has proposed a slightly different approach that provides the utilities with slightly less certainty. Specifically, Staff's proposal is that the last two years' evaluation NTG estimates be averaged. The distinction is that, at the time of filing with the ICC, the evaluations for the immediately prior program year are generally not yet available. As a result, Staff is proposing averaging one, known NTG estimate (PYt-1) with one, as-yet-unknown-NTG estimate (PYt). This provides less certainty to the utilities than my proposal, but allows use of more current evaluations that in general should better reflect the likely current and future performance of the program. The People support that approach. *Id.*

Indeed, while Mr. Mosenthal testified that he is amenable to providing the utilities with more certainty than they have had in previous years, Staff's approach is superior for two reasons:

- First, it will result in, all else equal, likely better estimates of actual future NTG ratios because *the most recent evaluations* will be incorporated and thus should best reflect the current status of the program and market; and
- Second, it provides a reasonable but significant incentive for all parties to reach consensus on a best estimate of future NTG ratios, because failing to reach consensus would result in less certainty and potentially more risk to all parties.

AG Ex. 1.0 at 35. Mr. Mosenthal noted that under his proposed framework, the last two already available evaluation NTG estimates are averaged, which would reflect program years that are one and two years old at the point of adoption. Because these NTG estimates are already known, any inability to reach consensus on a NTG estimate means that all parties will necessarily know with certainty what the ultimate default NTG estimate will be if there is no consensus. As a result, this creates a greater likelihood that a party might have a diminished desire to reach consensus whenever they prefer the known value from prior evaluations. In essence, a party can unilaterally "game" the process, and refuse to agree to any reasonable NTG value they prefer less to the known NTG default value that would be adopted without consensus. This creates a perverse incentive to not engage in consensus-building, and thus I support Staff's framework on this point. *Id.*

The Staff approach is a reasonable compromise that still significantly limits the risk to program administrators. That's the case because one of the two values that would be averaged is already known. Therefore, even if a future evaluation estimates a surprising NTG value, the impact on the program administrators is diluted because it is averaged with the one already known and certain. This is a reasonable compromise that significantly diminishes program administrators' risk and, importantly, likely results in a somewhat more current and better estimate of the actual NTG ratio that would result in the next program year. This methodology also serves to avoid perverse incentives that discourage parties to work together in good faith to

achieve consensus. It is important to note that if parties achieve consensus, then all NTG values are certain, which is the intent of the new framework. *Id.* at 36.

The People agree with ComEd that one of the underlying disputes among parties that caused delays was disagreement about how to define whether a program or market has changed significantly. ComEd Ex. 2.0 at 64. This was necessary because the original NTG framework approved by the Commission called for retroactive application of NTG when programs or markets have changed. The new Staff and AG recommended modified frameworks, however, allow for deeming NTG values *in all cases*, and simply requires that *EM&V consultants work jointly to recommend a single comprehensive set of best-estimate NTG values to use for each program, even when there is no historic Illinois evaluation to rely on or whether or not a program or market is undergoing significant change*. This is a key difference in the competing approaches: the Staff/Intervenor approach incorporates many sources of data – not just a single Program Administrator’s evaluator’s report – for establishing NTG values that can be equitably applied statewide. Further, they establish a schedule that, if kept to, resolves concerns about not having certainty by March 1.

Finally, the Staff approach provides clear procedures if for some reason a utility fails to file the NTG values in the TRM docket in a timely fashion by March 1, so that even in this event all parties will have certainty on how to proceed and what NTG values to use, albeit delayed few months.

In its Brief, ComEd advocates for the adoption of a modified NTG framework that permits its evaluator to operate as “the key decision-maker” on estimating NTG ratios. Consultation with the SAG is permitted, but ComEd’s evaluator, not the Commission, would have the final word on establishing prospective NTG ratios. ComEd IB at 68. Staff’s proposal, on the other hand, is modeled after the existing TRM annual collaborative updating process. As laid out in Staff’s Initial Brief, the NTG framework envisions collaboration among all electric and gas utility evaluators as well as stakeholders through the SAG process. Staff IB at 32-36.

ComEd falsely claims that the Staff/AG proposal elevates the SAG to decision-maker, a role that ComEd says is inconsistent with its advisory function. ComEd IB at 69. That argument falls flat upon any kind of reflection, however. The SAG, under the Staff/AG proposals, would operate as it always has: as an advisory, collaborative body that has reached consensus on many matters, including the development of the Commission-approved TRM. That TRM, once created, was presented to the Commission for its approval in Dockets 12-0528 and 13-0077. In this docket, the Staff-proposed modified NTG framework present a roadmap for consensus building and next steps when consensus cannot be achieved. The AG- and Staff-proposed frameworks in no way usurp Commission authority. Those procedures for consensus and non-consensus-building are transparent and efficient, as set forth at pages 32-36 of Staff’s Initial Brief.

If any proposal points to consolidating power, it is the Company’s. In the ComEd framework, the Company’s evaluator holds all decision-making authority. There is no more involvement of the Commission in the ComEd process than in the Staff/AG frameworks.

As noted in the AG Initial Brief, the Staff-proposed framework, with two caveats discussed below related to voting parties and spillover assessments should be adopted. Unlike the ComEd proposal, it provides incentives for the Utilities to build consensus because not all risk has been eliminated in the NTG assessment process. The intent of both AG Exhibit 1.1 and the Staff-proposed modified NTG framework is to provide the utility’s certainty by March 1 through reaching consensus on a set of deemed values that would then be filed with the

Commission by March 1. While there is still some uncertainty in the event complete consensus is not reached by March 1, the framework itself is designed to encourage consensus building, and there are clear default provisions for resolving non-consensus.

The Staff approach is a reasonable compromise that still significantly limits the risk to program administrators. That's the case because one of the two values that would be averaged is already known. Therefore, even if a future evaluation estimates a surprising NTG value, the impact on the program administrators is diluted because it is averaged with the one already known and certain. This is a reasonable compromise that significantly diminishes program administrators' risk and, importantly, likely results in a somewhat more current and better estimate of the actual NTG ratio that would result in the next program year. This methodology also serves to avoid perverse incentives that discourage parties to work together in good faith to achieve consensus. It is important to note that if parties achieve consensus, then all NTG values are certain, which is the intent of the new framework. *Id.* at 36.

ComEd argues in its Brief that the existing NTG framework proved difficult to apply because whether an updated ratio was applied prospectively or retrospectively depended on whether "market change" in a measure had occurred. ComEd IB at 69-70. While the People acknowledge that past difficulty, both the Staff and AG proposals eliminate that phrase as a criterion for applying various evaluation methodologies. Thus, this criticism rings hollow. The new Staff and AG recommended modified frameworks allow for deeming NTG values *in all cases*, and simply requires that *EM&V consultants work jointly to recommend a single comprehensive set of best-estimate NTG values to use for each program, even when there is no historic Illinois evaluation to rely on or whether or not a program or market is undergoing significant change*. This is a key difference in the competing approaches: the Staff/Intervenor approach incorporates many sources of data – not just a single Program Administrator's evaluator's report – for establishing NTG values that can be equitably applied statewide. Further, they establish a schedule that, if kept to, resolves concerns about not having certainty by March 1, as noted in the AG Initial Brief.

In sum, ComEd's characterization of the Staff/AG methodologies as unlawful decision-making power grabs should be dismissed. If these consensus-building frameworks are unlawful, then so was the creation of the TRM, which annually relies on a collaborative consensus-building, fact-based, evaluator-driven process. No party, including ComEd, believes that is the case.

B. Staff's Modified NTG Framework Should Be Modified to Limit Voting Parties

As noted in the AG Initial Brief, AG witness Mosenthal proposed sensible limitations on any voting structure included in the Staff NTG consensus-building process. In sum, the Commission should adopt Staff's proposed modified NTG framework, with the inclusion of a definition of voting parties that (1) limits participants to regular SAG attendees; (2) limits each party to a single vote; and (3) ensures that voting members (outside of the individual utility) have no financial interest in the outcome. It is important that any NTG procedures be consistent and applied equally to all program administrators.

Staff's approach in practice could allow literally anyone to attend a SAG meeting and refuse to agree to a NTG consensus position regardless of whether that party has any particular knowledge or expertise on the issue, or whether they have ever intervened or otherwise been involved in energy policy in Illinois. In addition, as noted in the AG Initial Brief, many

attendees at the SAG are subcontractors to another party. For example, consultants helping the program administrators design and plan programs, evaluators, and implementation contractors who sometimes are paid based on performance could conceivably vote under Staff's approach and have a clear conflict of interest in regard to the ultimate NTG ratio. Clearly, it would be inappropriate to allow these parties a formal vote because they generally are attending the SAG as contractors to some other party that *already has a vote*. In addition, evaluation consultants' role is to inform the parties of the results of their independent analysis -- not to have a vote in the SAG. As the NTG framework describes, they are tasked with working together as independent parties to propose NTG values based on their professional expertise. In addition, any party that has subcontracted with a utility to provide programs should not be permitted to vote on evaluation parameters. The Staff-recommended "anyone can vote" rule would permit utilities to have multiple votes by allowing subcontractors who have financial stakes in the process to vote -- clearly not a desirable result. Staff's approach even permits the SAG facilitator to vote, something that has never occurred to date. AG Initial Brief at 47-48.

Staff's Initial Brief was silent on this issue. ComEd pointed to the disagreement as evidence that "underscores that the AG was never intended to be a decision-making body, and is quite ill-suited for the role." ComEd IB at 71. But that rhetoric ignores the significant accomplishments of the SAG, including the development of an annually updated TRM and TRM Policy document.

For all of the reasons stated above and in the AG Initial Brief, the Commission should adopt the Staff-proposed NTG framework, for ComEd (and other utility Program Administrators) with the voting limitations recommended by AG witness Mosenthal.

C. Assessments of Spillover, Deemed or Evaluated, Should Be A Part of NTG Analysis.

ComEd has proposed that all program evaluations must address, in addition to free ridership, spillover from both the participant and non-participant perspectives. ComEd points out that without these perspectives, the evaluation is unduly reducing the net program impacts that should be realized by a program. ComEd then reasons that "if an evaluation does not account for spillover, then the free rider effect should also be ignored." ComEd Ex. 2.0 at 66.

While AG witness Mosenthal agrees that both free ridership and spillover should apply to NTG ratio estimation, omitting an examination of free ridership "would be a mistake, could unreasonably prevent parties from considering valuable and relevant information when estimating reasonable NTG values to deem, and ignores the significant role ComEd and other stakeholders play in establishing evaluation plans." AG Ex. 1.0 at 41.

Mr. Mosenthal noted that ComEd has a great deal of involvement in development and approval of evaluation plans for its programs. As a result, where appropriate they can ensure that spillover is indeed estimated along with free ridership. That being said, there are some instances where all stakeholders might agree that spillover is likely to be very *de minimis* and not worth expending EM&V resources to try to estimate. In these cases, completely eliminating any free ridership adjustments simply because the SAG agreed not to spend resources estimating *de minimis* spillover would be tantamount to "throwing the baby out with the bathwater." *Id.* Rather, Mr. Mosenthal proposed that, consistent with his recommendations related to a new NTG framework, that the SAG, in consultation with EM&V consultants, can agree to deem a spillover assumption regardless of whether there is any formal EM&V study tied to it. These can be based

on research outside of Illinois and professional judgment, and could be selected as zero or any other number. *Id.* at 41-42.

There is precedent for the SAG adopting spillover factors when they were not explicitly evaluated. In the latest SAG process of attempting to reach consensus on NTG ratios for EPY5 & 6 and GPY 2 & 3, all parties reached consensus to explicitly add an estimate of spillover to the evaluated free ridership results for some programs for some selected utilities whose evaluations had not included spillover. This occurred, Mr. Mosenthal testified, because only one utility's evaluation explicitly estimated spillover for a particular program. As a result, stakeholders agreed to allow this same amount of spillover to be assumed for the other program administrators for this program. There simply is no reason why the SAG cannot still operate in this way, and deem values while carefully allocating limited EM&V resources.

In fact, as AG Exhibit 1.1 shows, the intent of deeming NTG values for prospective application is not simply to formulaically adopt any evaluation result, but rather to agree on what all parties think is the best reasonable estimate of likely NTG in the future, given whatever past evaluation results and known program and market changes exist. This also allows for much greater consistency between program administrator values for similar programs and recognizes that any single evaluation can suffer from a wide uncertainty band.

In Rebuttal testimony, ComEd witness Brandt clarified that the Company is *not* saying that free ridership must be ignored if spillover is not specifically calculated in a study. ComEd Ex. 3.0 at 72. He concurred that where a program-specific value cannot be calculated for a given Plan year, and estimate of spillover should be calculated as a proxy. This position appears to be consistent with Mr. Mosenthal's recommendation, and should be adopted by the Commission.

It appears that the AG and ComEd are in agreement that evaluators should estimate spillover impacts when no study exists or it is impractical to quantify spillover. ComEd IB at 78-81; AG IB at 49-51. For its part, Staff argues that spillover should be considered, "although it may not always be included in estimates." Staff IB at 10. Staff's proposal would leave exclusion of spillover to evaluators. *Id.*

The People urge the Commission to reject this Staff proposal. Spillover, as noted in the AG Initial Brief, constitutes an important aspect of the calculation of energy savings and has been deemed in past evaluations. AG IB at 50. Deeming spillover based on prior fact-based evaluations fairly credits the spread of efficiency, while also preserving limited evaluation dollars. The AG's proposal to deem spillover when such assessments are not practical should be adopted.

D. ComEd's Proposed Realization Rate Adjustment

ComEd proposes that realization rates should be deemed at values different than 1.0. ComEd IB at 84. In their Initial Brief, the People provided detail supporting their position that realization rates should be presumed to be 1.0. AG IB at 51-53. ComEd, however, argues that it provided historical rates as support for its proposal and that removing these would artificially inflate its goals. AG witness Mr. Mosenthal defines realization rates as the ratio of the *evaluator-estimated* savings to the *utility-estimated* savings. AG IB at 52. In simplest terms, it reflects the variance between what the utility initially claims to be savings and what the evaluators ultimately verify to be the final evaluated impacts. *Id.* While plans and forecasts can be inaccurate, the realization rate reflects nothing more than an adjustment based on any inappropriate or incorrect counting of savings. Conceivably, gross savings variances could come

from a number of factors over which ComEd has control, including utility errors in its database, failure to accurately apply the agreed upon TRM values, or other factors that are generally in control of the utilities and/or their contractors. AG Ex. 1.0C at 38-39. In other words, according to AG witness Mr. Mosenthal, from a planning perspective, one should assume the savings being tracked in the database are correct based on the established TRM rules and actual program activity and not allow a variance that would provide a “cushion” to ComEd to allow for error. AG IB at 52, 55. According to the People, realization rates going forward, for planning purposes, should be presumed to be 1.0. AG Ex. 1.0C at 40.

ComEd’s primary complaint is that the People’s position would “artificially inflate” ComEd’s proposed modified goals. ComEd IB at 84. The People addressed this claim in their Initial Brief. AG IB at 52. The converse of ComEd’s statement could also be true – that the presence of its current realization rates less than 1.0 present an artificial *deflation* – or, rather, a cushion that ComEd is seeking to include to allow for error. AG IB at 52-53. The Commission should not allow ComEd this added cushion because it is part of an evaluator’s job to determine if the savings were counted properly. AG IB at 53; AG Ex. 1.0 at 39. Because variances between tracked savings and final evaluation numbers can reflect adjustments for things within the utility’s control, such as the errors or inappropriate application of the TRM, the utility should be held accountable for these realization rate adjustments.

ComEd also points to the historic realization rates it provided in response to NRDC 2.16, Attachment 1. ComEd IB at 84; *see* NRDC Ex. 1.0 at 27-28. First, these *historical* realization rates were taken from a time prior to adoption of the TRM. Now that the TRM exists, all parties and the Commission are in agreement that the TRM will dictate appropriate gross savings claims for all measures included within it. AG Ex. 2.0C at 18. Prior to the TRM, more variance could have been anticipated. This is no longer the case. While it is conceivable that some items may not be covered by the TRM, these items would be within the discretion of ComEd and its contractors to make a reasonable assumption. Clearly, ComEd has control over assumptions that ComEd has made. These factors outside the TRM would then, by definition, be under the control of the utility and outside of this discussion.

Effectively, by seeking to avoid accountability for factors *within* its control, ComEd is seeking to avoid bearing any of the risk associated with energy savings performance. According to Mr. Mosenthal, this is not only poor public policy but it also appears to contravene the legislature’s intent in establishing Section 8-103 of the Act. Indeed, Section 8-103 explicitly established performance targets and assigns penalties to utilities for failing to meet these energy savings performance targets. 220 ILCS 5/8-103. To remove all risk from the utility would render null the inclusion of these penalties and run counter to the plain meaning of the statute. *See Kennedy v. Community Unit School District*, 23 Ill.App.3d 382, 384, 319 N.E.2d 243, 246 (1974) (statutes are to be construed to give full effect to each word, clause, and sentence, so that no word, clause, or sentence is surplusage or void). Finally, it is important to remember that the utilities are using ratepayer money to implement programs for ratepayers. The utilities must remain accountable to ensure that they perform this statutory duty on behalf of ratepayers – not shareholders – in a prudent way, and in a way that maximizes energy savings while providing net benefits to the ratepayers.

Finally, the majority of the historic realization rates relied upon by ComEd are less than 1.0. To the extent that ComEd’s assumed realization rates for planning purposes are similar, Mr. Mosenthal anticipates that the removal of these rates would raise ComEd’s proposed goals. However, given the uncertainty that these could even exist, as discussed in greater detail in the

People's Initial Brief, it is important that the Commission prohibit ComEd from adjusting goals downward as they have based on planned realization rates that are different (and generally lower) than 1.0. *See* AG Ex. 2.0 at 17. The People also note that it is important that the utilities be held to an overall goal and are incented to make appropriate annual adjustments to ensure prudent programs. ComEd proposed a highly diverse portfolio that includes numerous programs and hundreds of measures and there is plenty of opportunity for ComEd to make appropriate adjustments and accommodate any annual changes to the TRM.

Essentially, the People urge the Commission to recognize that providing ComEd with its requested "cushion for error" clearly does not work in the best interests of ratepayers. In light of the arguments presented here and in the People's Initial Brief, the People urge the Commission to enter an order directing ComEd to re-file its Plan, pursuant to Section 8-103(f) to revise its savings goals consistent with this recommendation.

VII. ENERGY EFFICIENCY POLICY MANUAL

The People support continued operation of the SAG for the duties listed in Mr. Mosenthal's Direct Testimony. AG Ex. 1.0 at 43-44. To date, the SAG process has fostered dialog, collaboration, education on key issues relating to efficiency, and opportunities to comment upon and inquire about new and modified programs. The People appreciate ComEd's constructive and open work with the SAG to date. That being said, the People request that the Commission order ComEd to continue participating in the SAG for the duties listed in Mr. Mosenthal's testimony, consistent with prior orders that established the SAG, and more recent orders that outline a clear role for SAG in the evaluation of utility programs through the TRM process. *See, e.g.* ICC Docket Nos. 12-0528, 13-0077, *gen'ly*. In addition, the AG requests that the Commission direct ComEd to work with the SAG on the following tasks:

- Considering other sources of funding that could be used to fund energy efficiency outside of ratepayer funds;
- Annually updating the Technical Reference Manual (TRM) jointly with the SAG and other utilities and providing annual TRM updates;
- Continuing to participate in a joint gas-electric SAG;
- Improving the evaluation, measurement and verification (EM&V) process so that reports are produced in a timely fashion to inform TRM and NTG updates;
- Providing SAG input to draft EM&V plans so that SAG participants can recommend information and data that is gather and produced through the EM&V process;
- Requiring ComEd evaluators to concurrently send draft EM&V reports to ComEd, the ICC and the SAG;
- Providing written quarterly reports to the SAG no later than forty-five (45) days after the close of the quarter that contain program and portfolio-level accomplishments (kWh, kW, therms) relative to goals, program and portfolio-level expenditures relative to budget forecasts, any fund shifts greater than 20% of program budgets, expenditures on administrative costs, EM&V costs and marketing and outreach costs;
- An Illinois Energy Efficiency Policy Manual, designed to streamline and encourage consistency on various program-related policies for review and approval by the Commission; and

- Identifying how Illinois exemplifies “best practices” programs, and identifying other “best practice” programs offered in other jurisdictions that could be brought to Illinois.

AG Ex. 1.0 at 44-45.

Although it does not directly respond to the People’s testimony on the topic, ComEd objects to the creation of such a manual for the same reasons that Staff originally noted. ComEd IB at 78. Staff, however, appears to have stepped away from its original concerns and has effectively endorsed the creation of an “evaluation-related” manual. Staff IB at 77-78.

In response to Staff’s original concerns, the People reiterated that a Policy Manual should be adopted to ensure that evaluators and program administrators for the various utility service territories and customer bases play by the same set of rules in terms of monitoring savings achieved and evaluating programs. Currently, the utility and DCEO Program Administrators and their individually selected evaluators at times play by different rules. For these reasons, the People urge the Commission to include within its Order in this docket specific direction for the SAG to complete an Illinois Energy Efficiency Policy Manual to ensure that programs across the state and as delivered by various program administrators can be meaningfully and consistently evaluated.

VIII. CONCLUSION

WHEREFORE, the People of the State of Illinois respectfully request that the Commission enter an order consistent with the recommendations made in the People’s Initial and Reply briefs, as well as this Statement of Position.

Respectfully submitted,

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